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PREFACE.

THIS book is intended to furnish a statement of the law relating to auctions, and to serve as a guide to auctioneers in their business.

The present edition is the sixth. The first three editions were prepared by the late Dr. Joseph Bateman, of Lincoln's Inn: the fourth and fifth by Mr. Rolla Rouse, of the Middle Temple. The first edition was published in 1838, the third in 1846, the fifth in 1874.

The work has now been brought up to date and almost entirely recast and rewritten.

The following are some of the particulars in which this edition differs from its predecessor:—

1. The division of the treatise into three parts, "Preliminary Regulations," "Incidents of Sale," and "Posterior Regulations," has been abandoned.
2. A short chapter upon interpleader has been added; while the chapter headed "Of the Preliminaries of Sale under a Distress for Rent" has been expanded into one upon special kinds of sales by auction,

comprising sales by the Chancery Division of the High Court of Justice, sales under County Court process, sales under distresses for rent, and sales under the Pawnbrokers Act, 1872, the Innkeepers Act, 1878, and the Summary Jurisdiction Act, 1879.

3. The leading cases have been embodied in the text, instead of abstracts of them being given in the appendix.
4. The forms and precedents, which before were mostly distributed over the different chapters, have been printed together as Part II.
5. To facilitate reference, marginal notes have been used.

Dr. Bateman's rules for valuing property, his general tables and the numerous additions made to both by Mr. Rouse have been retained with but few alterations.

The present editors owe their best thanks to their friend Mr. C. A. Whitmore, of the Oxford Circuit, for carefully reading the proofs of this edition during its progress through the press, and to Mr. E. Tewson and Mr. T. Debenham, of the firm of Messrs. Debenham, Tewson, Farmer and Bridgewater, auctioneers, for valuable information and suggestions.

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Add. Con.	Addison on Contracts.
A. & E.	Adolphus & Ellis's Reports.
Alc. & N.	Alcock and Napier's Reports (Ireland).
Amb.	Ambler's Reports.
App. Cas.	Law Reports, New Series, Appeal Cases.
Archbold	Archbold's Pleading and Evidence in Criminal Cases.
Atk.	Atkyns's Reports.
Atk. Conv.	Atkinson's Conveyancing.
Bac. Abr.	Bacon's Abridgment.
B. & Ad.	Barnewall and Adolphus's Reports.
B. & Ald.	Barnewall and Alderson's Reports.
B. & B.	Broderip and Bingham's Reports.
B. & C.	Barnewall and Cresswell's Reports.
Beav.	Beavan's Reports.
Bell, Com.	Bell's Commentaries on the Laws of Scotland.
Bell, Trin.	Bell's Principles of the Law of Scotland.
Benj.	Benjamin on Sale of Personal Property.
Bing.	Bingham's Reports.
Bing. N. C.	Bingham's New Cases.
Bl. H.	Blackstone's (Henry) Reports.
Bli.	Bligh's Reports.
Bli. N. S.	Bligh's New Series.
Bl. R.	Blackstone's (Mr. Justice) Reports.
Bl. W.	Blackstone's (William) Reports.
B. & P.	Bosanquet and Puller's Reports.
Br. Ch. or Bro. Ch.	Brown's Chancery Reports.
Brod. & B.	Broderip and Bingham's Reports.
Broom, C. L., or Broom, Com.	Broom's Commentaries on the Common Law.
Bro. P. C.	
B. & S.	Brown's Cases in Parliament.
Bull. or Bullen	Best and Smith's Reports.
Bullen & Leake	Bullen on Distress.
Bullen & Leake	Bullen and Leake's Precedents of Pleading.
Bull, N. P.	Buller's Nisi Prius.
Burr.	Burrow's Reports.
Camp.	Campbell's Reports.
Car. & M.	Carrington and Marshman's Reports.

LIST OF ABBREVIATIONS USED.

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C. B.	{ Common Bench Reports, or Manning, Granger and Scott's Reports.
C. B. N. S.	Common Bench Reports, New Series.
C. C. R.	Crown Cases Reserved.
Ch. Ca.	Cases in Chancery.
Ch. D.	Law Reports, New Series, Chancery Division.
Chit.	Chitty's Reports.
Chit. Con.	Chitty on Contracts.
Ch. Pr. or Chit. Prac.	Chitty's Practice.
C. & J.	Crompton and Jervis's Reports.
C. & K.	Carrington's and Kirwan's Reports.
Cl. & F. or CL. & Fin.	Clark and Finnely's Reports.
C. L. P. A.	Common Law Procedure Act.
C. L. R.	Common Law Reports.
C. & M.	Crompton and Meeson's Reports.
C. M. & R.	Crompton, Meeson and Roscoe's Reports.
Co. Lit.	Coke upon Littleton.
Coll. or Coll. C. C.	Collyer's Cases in Chancery.
Coop. G.	Cooper's (G.) Chancery Reports.
Co. R. or Co. Rep.	Coke's Reports.
Cowp.	Cowper's Reports.
Cox.	Cox's Reports, Chancery.
C. P.	Common Pleas.
C. & P.	Carrington and Payne's Reports.
C. P. D.	Law Reports, New Series, Common Pleas Division.
Cro. Eliz.	Croke's Reports, <i>temp.</i> Elizabeth.
Cr. & Ph.	Craig and Phillips's Reports.

Dan.	Daniel's Reports.
Dan. Ch. Pr.	Daniell's Chancery Practice.
Dan. Forms.	Daniell's Chancery Forms.
Dart.	Dart's Vendors and Purchasers.
Dav.	Davidson's Precedents in Conveyancing.
Dav. Conc. Prac.	Davidson's Concise Precedents in Conveyancing.
De G. F. & J.	De Gex, Fisher and Jones's Reports.
De G. & J.	De Gex and Jones's Reports.
De G. J. & S.	De Gex, Jones and Smith's Reports.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports.
De G. & S. or De G. & Sm.	De Gex and Smale's Reports.
D. & L.	Dowling and Lowndes's Practice Cases.
D. N. S.	Dowling's Practice Reports, New Series.
Doug.	Douglas's Reports.
Dow.	Dow's Reports.
Dow. P. C. or Dowl. P. R.	Dowling's Practice Reports.
D. & R.	Dowling and Ryland's Reports, King's Bench.
Drew.	Drewry's Reports.
Drew. & Sm.	Drewry and Smale's Reports.
D. & W. or Dr. & War.	Drury and Warren's Reports.
Dy.	Dyer's Reports.

East	East's Reports.
E. & B.	Ellis and Blackburn's Reports.
E. B. & E.	Ellis, Blackburn and Ellis's Reports.
E. & E.	Ellis and Ellis's Reports.
Eq. Rep.	Equity Reports.
Esp.	Espinasse's Reports.
Ex.	Welsby, Hurlstone and Gordon's Reports.
Ex. D.	Law Reports, New Series, Exchequer Division.

F. & F.	Foster and Finlason's Reports.
Fl. & K.	Flanagan and Kelly's Reports (Ireland).
Freem. Ch.	Freeman's Chancery Reports.
Fry	Fry on Specific Performance.

Gale	Gale's Reports.
G. & D.	Gale and Davison's Reports.
Gif. or Giff.	Giffard's Reports.
Gilb.	Gilbert on Distresses.
G. & J.	Glyn and Jameson's Reports.
G. R.	General Rules.

Hare	Hare's Reports.
Har. & W.	Harrison and Wollaston's Reports.
Hayes	Hayes's Reports (Ireland).
Hayes & J.	Hayes and Jones's Reports (Ireland).
H. Bl.	Henry Blackstone's Reports.
H. & C.	Hurlstone and Coltman's Reports.
H. & H. ..	Horn and Hurlstone's Reports.
H. L. or H. L. Ca.	Clark and Finnelly's House of Lords Reports.
H. & M.	Hemming and Miller's Reports.
H. & N.	Hurlstone and Norman's Reports.
Hodg. or Hodges	Hodges's Term Reports.
Holt, N. P.	Holt's Nisi Prius Reports.
Horn & H.	Horn and Hurlstone's Reports.
Hov. Supp.	Hovenden's Supplement to Vesey, Junior.
H. & R.	Harrison and Rutherford's Reports.
H. & Tw.	Hall and Twells's Reports.
H. & W.	Harrison and Wollaston's Reports.

Inst.	Coke's Institutes of the Laws of England.
I. R.	Irish Reports.

Jac.	Jacob's Reports.
Jac. & W.	Jacob and Walker's Reports.
J. & H. or John. & H.	Johnson and Hemming's Reports.

LIST OF ABBREVIATIONS USED.

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J. & L. or Jo. & Lat.	Jones and Latouche's Reports (Ireland).
Jud. Act	Judicature Act.
Jur.	Jurist Reports.
Jur. N. S.	Jurist, New Series.
J. & W.	Jacob and Walker's Reports.

Kay	Kay's Reports.
Kay & J.	Kay and Johnson's Reports.
Keen	Keen's Reports.
Kent, Com.	Kent's Commentaries on American Law.
K. & J.	Kay and Johnson's Reports.

Lat.	Latch's Reports.
Ld. Raym.	Lord Raymond's Reports.
Leake	Leake on Contracts.
Leon.	Leonard's Reports.
Lewin	Lewin on Trusts.
L. J.	Law Journal.
L. R.	Law Reports.
L. T.	Law Times.
Lut.	Lutwyche's Reports.

Mac. & G.	Macnaghten and Gordon's Reports.
Maclachl.	Maclachlan on Merchant Shipping.
Macq. H. L. Cas.	Macqueen's Appeal Cases (Scotch).
Madd.	Maddock's Reports.
Man. & G.	Manning and Granger's Reports.
Man. & R.	Manning and Ryland's Reports.
Marsh.	Marshall's Reports.
M. C.	Magisterial Cases.
M'Cle.	M'Clelland's Reports.
M. D. & D.	Montagu, Deacon and De Gex's Reports.
Mer.	Merivale's Reports.
M. & G.	Manning and Granger's Reports.
M. & H.	Murphy and Hurlstone's Reports.
Mo.	Moore's Reports, K.B.
Mod. or Mod. Rep.	Modern Reports.
Mol.	Molloy's Reports (Ireland).
Mont. & Ayr.	Montagu and Ayrton's Reports.
Mont. D. & De G.	Montagu, Deacon and De Gex's Reports.
Moo. J. B.	J. B. Moore's Reports.
Moo. & M.	Moody and Malkin's Reports.
Moo. & P.	Moore and Payne's Reports.
Moo. & R.	Moody and Robinson's Reports.
Moore (C. P.)	Moore's Common Pleas Reports.
Moo. & S.	Moore and Scott's Reports.
Morgan	Morgan's Chancery Acts and Orders.

M. & P.	Moore and Payne's Reports.
M. & Rob.	Moody and Robinson's Reports.
M. & S.	Maule and Selwyn's Reports.
Murp. & H.	Murphy and Hurlstone's Reports.
M. & W.	Meeson and Welsby's Reports.
My. & C.	Myline and Craig's Reports.
Myl. & K.	Mylne and Keene's Reports.

Nev. & M. or N. & M. Neville and Manning's Reports.
N. & P. Neville and Perry's Reports.
N. R. New Reports, by Bosanquet and Puller.
N. S. New Series.

O. S. Old Series.

Paley, P. & A.	Paley on the Law of Principal and Agent.
P. D.	Law Reports, New Series, Probate Division.
P. & D.	Perry and Davison's Reports.
Pea. or Peake	Peake's Reports.
Peake, Add. Cas.	Peake's Additional Cases.
Peake, N. P. C.	Peake's Nisi Prius Cases.
Penn. St.	Pennsylvania State Reports.
Ph.	Phillips's Reports.
Pickering.....	Pickering's Reports (Massachusetts).
Poll. Con.	Pollock on Contracts.
Pr. Ch.	Precedents in Chancery (Finch).
Pri. or Price	Price's Reports.
Prid.	Prideaux's Precedents in Conveyancing
P. W. or P. Wms.	Peere Williams's Reports.

Q. B..... } Adolphus and Ellis, Queen's Bench Reports, New
Series.
Q. B. D. } Law Reports, New Series, Queen's Bench Division.

R. or Rep.	Coke's Reports.
R. & Myl.	Russell and Mylne's Reports.
Roll. Abr.	Rolle's Abridgment.
Rosc. or Roscoe	Roscoe's Evidence at Nisi Prius.
Rose	Rose's Reports.
Russ.	Russell's Reports, Chancery.
Russ. & M.	Russell and Mylne's Reports.
Russ. Merc. Ag.	Russell on Mercantile Agency.
Ry. & M.	Ryan and Moody's Reports.

Salk.Salkeld's Reports.
Sch. & Lef.Schoales and Lefroy's Reports.

Sc. or Scott	Scott's Reports.
Sc. N. R.	Scott's New Reports.
Seton	Seton on Decrees.
Sim.	Simon's Reports.
Sim. & St. or Sim. & Stu.	Simon and Stuart's Reports.
Sm. Con.	Smith's Law of Contracts.
Sm. & G.	Smale and Giffard's Reports.
Smith	Smith's Reports.
Sm. L. C.	Smith's Leading Cases.
Sm. Merc. Law	Smith's Mercantile Law.
S. M. & P.	Stuart, Milne and Peddie's Reports (Scotland).
S. & S.	Simon and Stuart's Reports.
Stark.	Starkie's Reports.
Stark. Ev.	Starkie on Evidence.
St. Com.	Stephen's Commentaries.
Story, Ag.	Story on Agency.
Story, Con.	Story on Contracts.
Story, Sal.	Story on Sales of Personal Property.
Sugd.	Sugden's Vendors and Purchasers.
Swan. or Swans.	Swanston's Reports.

Taun. or Taunt.	Taunton's Reports.
T. R.	Term Reports (Durnford and East).
Turn. & R.	Turner and Russell's Reports.
Tyr. or Tyrw.	Tyrwhitt's Reports.
Tyr. & G.	Tyrwhitt and Granger's Reports.

V. & B.	Vesey and Beames's Reports.
Vent.	Ventris's Reports.
Vern.	Vernon's Reports.
Ves.	Vesey's (junior) Reports.
Ves. & B.	Vesey and Beames's Reports.
Ves. Sen.	Vesey's (senior) Reports.
Vin. or Vin. Abr.	Viner's Abridgment.
V. & P.	Vendors and Purchasers.

W. Bl.	William Blackstone's Reports.
Wend.	Wendell's Reports (New York).
Wh. & Tu.	White and Tudor's Leading Cases.
Willes	Willes's Reports.
Will. Woll. & D.	Willmore, Wollaston and Davison's Reports.
Will. Woll. & H.	Willmore, Wollaston and Hodges's Reports.
Wils.	Wilson's Reports.
Wilson.	Wilson's Judicature Acts and Rules.
Wms. Exors.	Williams on Executors and Administrators.
Wms. Saunders	Williams's Notes to Saunders's Reports.

Wolst. & Turn.	{ Wolstenholme and Turner's Conveyancing Act 1881 and 1874.
Wood. or Woodf. L. & T.	Woodfall's Landlord and Tenant.
W. & T. L. C.	White and Tudor's Leading Cases.
Y. & C.	Younge and Collyer's Reports.
Y. & C. C. C.	Younge and Collyer's Chancery Cases.
Y. & J.	Younge and Jervis's Reports.
You.....	Younge's Reports.

THE LAW OF AUCTIONS.

INTRODUCTORY CHAPTER.

AN auction, in the widest sense of the term, is a sale, however conducted, by which a person obliges himself to transfer property to the highest bidder within the conditions of the sale ; it ordinarily denotes such a sale conducted in the usual manner (*a*). An auctioneer is a person by whom auctions are conducted (*b*).

Definition
of auction
and
auctioneer.

The property forming the subject of an auction-sale may be either real or personal, or both (*c*) ; it is sold, sometimes as

Subject-
matter of
auctions.

(*a*) Cf. Dart, 177 ; and see next page.

(*b*) For circumstantial definitions of auction and auctioneer, see the statutes 19 Geo. III. c. 56, s. 3, and 42 Geo. III. c. 93, s. 14, both repealed by 8 & 9 Vict. c. 15 ; and also s. 4 of the last-named statute (see Appendix, *post*, p. 388). Auctioneers were sometimes called brokers in our old law. Spelman in his Glossary, "*Auctionarii*," defines them thus : "*Qui publicis subhastationibus præsunt, propolæ, et quos Angli 'brokers' dicimus.*" Cf. Story, Ag., p. 24, note 4. For the distinction between auctioneers and brokers, see *post*, p. 18, note (*w*). An auctioneer is a trader within the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

(*c*) Wife auctions, in ancient times, were of annual occurrence in Babylonia ; see the interesting description of Herodotus (I., 196), who speaks of them as being, in his opinion, the best of the Babylonian customs. The view that women are only a species of property—a view of which traces have been discerned in the pandects of the Netherlands and Spain, in the West Gothic and Longobard laws, and even in the marriage service of the Church of England—has perhaps not even yet died out. It is said that the practice of selling marriageable girls by auction obtained until recently at the great fairs of Nijni-Novgorod, in Russia ; and a belief that the sale of a wife by auction operates legally as a divorce appears still to linger in some of our own rural and manufacturing districts.

a whole, sometimes in lots ; and the property of several owners is frequently offered for sale at one and the same auction.

Kinds of
auctions.

1. Ordinary.

The usual manner of conducting an auction is as follows. The fact that the sale is to be held, the particulars of the property, and the time and place of the sale, are advertised in the newspapers or by handbills (in some places, the public crier), or in both ways. At the time and place appointed, the auctioneer, from his desk or *rostrum*, reads aloud the conditions upon which the property will be transferred to the highest bidder, and invites those present to bid. Thereupon, those who are desirous of purchasing bid, one after the other, each succeeding offer being higher than the preceding one, and the biddings being called by the auctioneer. The highest bidder is declared the purchaser, the acceptance of his offer being signified to the company by the auctioneer striking his desk with a small portable hammer ; whence the auctioneer is said to knock down the property to the buyer. If there is a reserve, and it is not reached, the auctioneer withdraws the property.

2. *Roups*.

In Scotland, where an auction is called a *roup*, the proceedings are much the same, except that disputes arising at the auction are commonly referred to an umpire, called the *judge of roup*, and that, on the sale of an estate, a sum at which the biddings are to commence, called the *upset price*, is generally published beforehand.

3. *Dutch auctions*.

In a so-called *Dutch auction* the property is put up at a high price, and if no one takes it at that sum, a less amount is named, and so on, until some one closes with the offer (*d*).

Former
auctions of
post horse
duties.

(*d*) The mode of conducting sales by auction of the former post horse duties was a mixture of a *Dutch auction* and an ordinary auction. The duties were put up at a large sum named in the particulars, and the proceedings began in the same manner as in a *Dutch auction* ; but, when any person bid, others might advance on his bidding, and the highest bidder was declared the purchaser, just as if the sale had been conducted in the ordinary way.

In some English counties a singular method of selling estates for the redemption of the land tax is adopted. The auctioneer states the sum of money wanted and the highest number of acres with which the seller will part, and the person who will accept the smallest quantity of land for the sum required is declared the purchaser ; so that persons bid downwards, until some one names a quantity of land less than any one else will take.

4. Auctions for redemption of land tax.

There is also a mode of sale, principally in use in Devonshire and Cornwall, where it is called a *survey*, which differs from the common auction in this circumstance only, that the seller is not bound to dispose of the property at the price offered by any of the bidders ; but, if the highest sum bid does not satisfy him, he offers to sell the property first to the highest bidder at an advanced price above the highest sum bid ; if the highest bidder refuses to purchase at the advanced price, the seller makes the same offer to the next highest bidder, and so on, until one of the bidders accepts the purchase, or until every bidder has refused it, in which case the property remains unsold with the owner (e).

5. Surveys.

As a rule, a portion of the purchase-money is paid by way of deposit at the auction itself, the remainder being paid, in the case of estates, upon the completion of the contract by the execution of the conveyance, and in the case of goods, upon delivery (f).

Payment of purchase-money.

(e) The holding of mock (or trap) auctions is a not uncommon practice with swindlers. Persons known as *barkers* are stationed outside to allure passers-by into a room where confederates are ready to run up worthless articles to fancy prices, and, generally, to take such advantage of the public as opportunity may suggest. A stranger making, or even not making, an offer is almost sure to effect a purchase. It has been held that to fraudulently knock down goods to a person who has not bid for them, and obtain the price by intimidation, is larceny ; *R. v. M'Grath*, L. R. 1 C. C. R. 205 ; 39 L. J. M. C. 7 ; and see Archbold, 374, 453.

Mock auctions.

(f) A custom of giving credit is said to be met with in the United States of North America.

Commis-
sion.

Advantages
of auctions.

The auctioneer is generally paid by a commission.

Sales which
must be by
auction.

The publicity of an auction, and the competition which it engenders, render it the most effectual method of ascertaining and obtaining the market price, which is, practically, the value, of property (*g*). For this reason, trustees and mortgagees, in selling estates, should, as a general rule, resort to an auction, unless specially authorized to sell by private contract (*h*). For this reason, also, the sale of an estate by the Court of Chancery is usually made by way of auction (*i*); a sale of personal property under an order of a County Court must be by auction, unless the Court otherwise directs (*j*); the sale of a distress under the Summary Jurisdiction Act, 1879 (*k*), must be by auction, save so far as the person against whom the distress is levied otherwise consents in writing (*l*); and sales under the Pawnbrokers Act, 1872,

Auction
not market
overt.
Purchase of
trust pro-
perty by
trustee.

(*g*) "The sale by auction is evidence of the market price"—Sir John Leach, when V.-C., in *Shelly v. Nash*, 3 Madd. at p. 236. "A sale by auction negatives the imputation of fraud"—Lord Cottenham, C., in *Earl of Aldborough v. Trye*, 6 Madd. at p. 460. Nevertheless, a sale by auction is not *per se* a sale in market overt; *Lee v. Bayes* (or *Robinson*), 18 C. B. 599; 25 L. J. C. P. 249; 2 Jur. N. S. 1093; and the fact that the sale has been by auction is insufficient to support a purchase by a trustee; *Ex parte Hughes*, 6 Ves. 617; *E. p. Bennett*, 10 Ves. 393; *Sanderson v. Walker*, 13 Ves. 601; *Oliver v. Court*, Dan. 301; *Ingle v. Richards*, 28 Beav. 361; Sugd. 691. Before the passing of 31 & 32 Vict. c. 4, a purchase by private contract of a reversionary interest could be set aside on the mere ground of undervalue; but, if the purchase was by auction, some further ground of relief, such as fraud, surprise or mistake, had to be proved; *Newton v. Hunt*, 5 Sim. 511; *White v. Damon*, 7 Ves. 30. Now no *bond fide* purchase of a reversionary interest can be set aside on the ground of undervalue only.

(*h*) But see 23 & 24 Vict. c. 145, ss. 1, 2 (as to land), and 44 & 45 Vict. c. 41, s. 35.

(*i*) Where, in pursuance of an order of Court directing a sale of real estate by public auction, an attempt has been made to sell by public auction and has failed, the property cannot be sold under the same order otherwise than by public auction; *Berry v. Gibbons*, L. R. 15 Eq. 150; 42 L. J. Ch. 231; but see *Barlow v. Osborne*, 27 L. J. Ch. 308.

(*j*) County Court Rules, 1875, Order XVIII., Rule 15; see *post*, p. 250.

(*k*) 42 & 43 Vict. c. 49.

(*l*) S. 43.

of goods pledged for more than 10s. (*m*), and under the Innkeepers Act, 1878 (*n*), must always be by auction.

It is obvious, too, that goods will often be more rapidly or completely realized by an auction than in the ordinary course of business or by private bargain. Accordingly, in the wholesale trades in timber, fish, wool, skins and hides, auctions are employed as the normal mode of sale; and there are several classes of imports, notably indigo, tea and colonial produce, of which the greater part is placed in the European market by this means.

The mode of sale in question is of high antiquity and appears to be common to all civilized communities (*o*). It is generally subject to special regulations, the object of which is the protection of the public or the levying of a tax. In this country, a *pro ratâ* government duty was formerly imposed upon auction-sales; but in course of time, owing to the number of exemptions to which it became subject, it was found to work injustice by the unevenness of its incidence, and to entail an expense of collection disproportion-

Commercial
auctions.

Auction
duty

(*m*) 35 & 36 Vict. c. 93, s. 19; see *post*, p. 282.

(*n*) 41 & 42 Vict. c. 38, s. 1; see *post*, p. 284. It appears to have been assumed in *R. v. Jones*, 1 C. & J. 140, that under a writ of *venditioni exponas* issued under an extent the sheriff was bound to sell by auction; but see note, *ib.*, p. 142.

(*o*) Among the Romans, it was employed in the earliest times for the sale of spoils of war, and the erection of a spear as the signal of an auction (whence the expression *sub hastâ vendere*) preserved the memory of its martial origin. In Egypt, under Mehemet Ali, the taxes, which were paid in kind, were realized by auction. The following extract from a Philadelphia newspaper, relating to the system of dealing with paupers obtaining in Hancock County, West Virginia, is taken from the *St. James' Gazette* of the 5th of May, 1881:—"In March of each year the unfortunate paupers of Hancock County are collected in front of the courthouse in New Cumberland; an auctioneer mounts the block and knocks them off, one at a time, to the lowest, instead of—as used to be the practice with the slaves—the highest, bidder. In other words, the man who bids to keep a pauper for a year for the lowest amount is the purchaser."

Sale under
writ of
*venditioni
exponas*.

tioned to the revenue which it yielded (*p*) ; and it was
abolished. finally abolished by 8 & 9 Vict. c. 15, s. 1. It is still, how-
ever, necessary that any one acting as an auctioneer should
be provided with an excise licence.

(*p*) Twelfth Report of the Commissioners of Excise Inquiry, and Par-
liamentary Return, 24th of February, 1845. In 1844, the last year of
its collection, the produce of the duty was £308,162. In 1841, whilst
the total value of estates and effects in the United Kingdom on which the
duty was charged was only £8,720,058 9s. 3d., the value of the property
on which exemption was claimed was £36,511,409 1s.

CHAPTER I.

THE AUCTIONEER'S LICENCE.

UNLESS specially exempted, every one who carries on the business of an auctioneer, or who sells property, or offers property for sale, by auction, must have an excise licence in that behalf. Subject to this restriction, any person (*a*), of either sex, may become an auctioneer, it being left to the public to decide upon the fitness of the parties licensed. Who may be auctioneer.

The first thing, therefore, to be done by the intending auctioneer is to take out an auctioneer's licence.

The act by which auctioneer's licences are now regulated is 8 & 9 Vict. c. 15 (*b*). This statute (*c*) repealed the excise duty formerly levied upon the purchase-money at auction sales (*d*), and all previous acts of excise relating to auctions or to auctioneers, except so much of 6 Geo. IV. c. 81, as it did not repeal or alter (*e*). 8 & 9 Vict. c. 15.

Its fourth section enacts that "every person who exercises or carries on the trade or business of an auctioneer, or who acts in such capacity at any sale or roup (*f*), and every Sect. 4. a. Auctioneer's licence necessary.

(*a*) The beneficed clergy may not trade; but a disregard of this prohibition only entails ecclesiastical consequences; see *Lewis v. Bright*, 4 E. & B. 917; 24 L. J. Q. B. 191.

(*b*) See Appendix, *post*, pp. 386—390.

(*c*) By s. 1.

(*d*) See *ante*, p. 5. The repeal of that duty did away with the necessity for the bonds which auctioneers formerly had to give: 6 Geo. IV. c. 81, s. 9; repealed: 36 & 37 Vict. c. 91. Auctioneers' bonds.

(*e*) The parts of 6 Geo. IV. c. 81, which concern auctioneers will be found in the Appendix, *post*, pp. 383—386.

(*f*) See *ante*, p. 2.

(*Sic.*) person who sells, or offers for sale, any goods or chattels, lands, tenements or hereditaments, or any interest therein, at any sale or roup where any person or persons *become the purchaser* of the same by competition and being the highest bidder, either by being the single bidder, or (by) increasing upon the biddings made by others, or decreasing on sums named by the auctioneer, or person acting as auctioneer, or other person, at such sale, or by any other mode of sale by competition, shall, except as hereinafter in this act mentioned (*g*), be deemed to carry on the trade or business of an auctioneer and shall be required to take out" an excise licence for that purpose ; "and every such licence shall be renewed annually ten days at least before the expiration thereof on the 5th of July in each and every year ; and every auctioneer having had such a licence who continues to carry on the trade or business of an auctioneer in the year next ensuing the expiration thereof and omits to renew the same as aforesaid, and every person who carries on the trade or business of an auctioneer as aforesaid without taking out such licence as by this act directed, shall, except as hereinafter in this act mentioned (*h*), forfeit £100 ; provided always that on every such licence," at whatever period of the year taken out, "the full duty of excise by this act imposed shall be paid, any other act or acts to the contrary notwithstanding."

b. Licence to be annually renewed.

c. Expiry of licence.

d. Penalty for not taking out or not renewing licence.

e. Duty on licence indivisible.

Sect. 2. By the second section an annual duty of £10 is imposed upon "every licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom."

Summary The effect of these two sections, stated summarily, is as

(*g*) *Viz.*, in s. 5 ; see *infra*, pp. 10—12.

(*h*) *Ibid.*

follows : subject to certain exemptions, every person offering of ss. 2 & 4. property for sale by auction must, under a penalty of £100, be provided with an auctioneer's licence, upon which a duty of £10 is payable, and which is only valid for a year, or part of a year, ending on the 5th of July.

The owner of property advertised for sale, on a day to *R. v.* which the sale had been adjourned, invited the intending *Taylor.* purchasers present to retire into an adjoining room, where each of them was to set down two sums upon a slip of paper, the whose slip should contain the highest sum to be the purchaser, and at the lower sum named by him, if that should exceed the highest named by any one else ; this was an offer for sale by auction (*i*).

Although the preamble of the act which first instituted auctioneers' licences (*j*) recited that (in the opinion of the Commons) "it would be for the advantage of the public that all persons using or exercising the trade or business of an auctioneer should be obliged to take out a licence for that purpose, specifying their names and places of abode respectively, and to grant" to the Crown "a duty upon such licences," it is conceived that the object of the legislature in requiring auctioneers to be licensed is to recruit the revenue, and not to protect the public ; and that, consequently, not only would a sale by auction not be vitiated by the auctioneer being unlicensed, but the auctioneer would not be prevented by his want of a licence from recovering his remuneration as well as his expenses (*k*).

Sale not
vitiated by
auc-
tioneer's
want of
licence.

(i) *R. v. Taylor*, M'Cle. 362 ; 13 Price, 636 ; and see the various kinds of auctions described *ante*, pp. 2 and 3. A sale by tender has been held not to be a sale by auction within the meaning of an order of court directing a sale of the latter kind ; *Berry v. Gibbons*, L. R. 15 Eq. 150 ; 42 L. J. Ch. 231 ; but see *Barlow v. Osborne*, 27 L. J. Ch. 308 ; *Waterhouse v. Wilkinson*, 1 H. & M. 636.

(j) 17 Geo. III. c. 50.

(k) *Palk v. Force* (12 Q. B. 666 ; 17 L. J. Q. B. 299 ; 12 Jur. 797)

Exemptions from licence :

The number of exemptions has been considerably increased since the passing of 8 & 9 Vict. c. 15, partly by various acts of parliament, partly by orders made from time to time by the boards of commissioners of excise and of inland revenue respectively (*l*) ; and at the present time no auctioneer's licence is necessary in the case of (*m*) :—

a. Certain auctions under process.

- (1.) Sales under orders of the Chancery Division of the High Court of Justice, by persons duly appointed to effect such sales (*n*) ;
- (2.) Sales of goods taken in execution under County Court process, made by County Court bailiffs duly authorized to act as brokers for the purpose of such sales (*o*) ;
- (3.) Persons selling goods under the authority of 6 Geo. IV., c. 48, or 7 Will. IV. & 1 Vict. c. 41,

being distinguishable. As to when and how far a statute is to be regarded as rendering a transaction illegal, see *Taylor v. Crowland Gas Co.*, 10 Ex. 293 ; 23 L. J. Ex. 254 ; 18 Jur. 913 ; 2 C. L. R. 1247 ; *Fennell v. Ridler*, 8 D. & R. 204 ; 4 B. & C. 406 ; *Johnson v. Hudson*, 11 East, 180 ; *Brown v. Duncan*, 5 Man. & R. 114 ; 10 B. & C. 93 ; *Bailey v. Harris*, 12 Q. B. 905 ; 18 L. J. Q. B. 115 ; 13 Jur. 341 ; *Smith v. Mawhood*, 14 M. & W. 452 ; 15 L. J. Ex. 149 ; *Redmond v. Smith*, 7 Man. & G. 457 ; 8 Sco. N. B. 250 ; 13 L. J. C. P. 159 ; 8 Jur. 711 ; *Scarfe v. Morgan*, 4 M. & W. 270 ; 1 H. & H. 292 ; *Smith v. Lindo*, 5 C. B. N. S. 587 ; 27 L. J. C. P. 335 ; 4 Jur. N. S. 974 ; Benj. 427, 432 ; Poll. Con. 258, 262. *Quære*, as to the effect of non-compliance with 8 & 9 Vict. c. 15, s. 7 (as to exhibiting name and address during sale, see *infra*, p. 19) ; where note the words "so that all persons may easily read the same" and the circumstance that there is a penalty for every offence.

(*l*) Under the authority, apparently, of 7 & 8 Geo. IV. c. 53, s. 2, and 12 & 13 Vict. c. 1, s. 3. See note (*x*) *infra*, p. 12.

(*m*) The exemptions mentioned in the text are created by "Boards Orders," except where the contrary is indicated in the notes.

(*n*) See 15 & 16 Vict. c. 80, ss. 1, 36 ; c. 87, s. 42. The power to have a sale of real estate made in chambers before the chief clerk has fallen into disuse ; see *Pemberton v. Barnes*, L. R. 13 Eq. 349 ; 41 L. J. Ch. 209. As to sales by the Chancery Division generally, see *post*, pp. 237 *et seq.*

(*o*) See 9 & 10 Vict. c. 95, s. 106 ; 12 & 13 Vict. c. 101, s. 10. As to sales under process of the County Courts generally, see *post*, pp. 250, 251.

acts relating to the recovery of small debts in Scotland (*p*) ;

- (4.) Sales, by bailiffs, of goods taken in execution under decrees of civil bill courts in Ireland (*q*) ;
- (5.) Any person selling goods under a distress for non-payment of rent or tithes to a less amount than £20 (*r*) ;
- (6.) Any person selling fish, where first landed, upon the sea-shore (*s*) ;
- (7.) Sales " by ticket " of mineral ore ;
- (8.) The letting of lands or any interest therein ;
- (9.) The letting of tolls to farm, by the trustees of the tolls or their clerks ;
- (10.) Officers of the customs conducting sales of seizures under the direction of the commissioners of customs ;
- (11.) Officers of excise selling goods seized for a breach of the revenue laws ;
- (12.) Officers of the ordnance conducting sales under the authority of the surveyor-general of ordnance ;
- (13.) Clerks in the naval and victualling departments of the admiralty, selling public stores in the yards of those departments by direction of the lords of the admiralty ;
- (14.) Non-commissioned officers and soldiers selling, under the direction of the secretary of state for the war department, the effects of officers and

b. Auction under distress for less than £20.
c. Certain auctions of particular kinds of property.

d. Certain official auctions.

(*p*) 8 & 9 Vict. c. 15, s. 5.

(*q*) 14 & 15 Vict. c. 57, s. 146. Section 1 of this act repealed 6 & 7 Will. IV. c. 75, and 7 Will. IV. and 1 Vict. c. 43, sales under which were likewise included among the exemptions comprised in s. 5 of 8 & 9 Vict. c. 15.

(*r*) 8 & 9 Vict. c. 15, s. 5.

(*s*) 33 & 34 Vict. c. 32, s. 5.

soldiers dying in Her Majesty's service, or the effects of deserters, where the proceeds are to be accounted for to the public ;

- (15.) Sales of property for the benefit of the Crown, by receivers and deputy-receivers of wrecks appointed under Part VIII. of the Merchant Shipping Act, 1854 (*t*), whether such officers be officers of customs or not, provided they are employed officially.

The 5th section of the act of 8 & 9 Vict. c. 15 (*u*), which exempts persons selling goods under the authority of several statutes (*v*), exempts also any person selling goods "under authority of any other act or acts of parliament now in force"—(the act received the royal assent on the 8th of May, 1845)—"in which the like exemption, as by the act specified, is given to the proper officer of court executing the process of such court to sell the effects seized by him by auction without taking out or having any licence as an auctioneer, provided the sum for which such process is enforced is under £20." There does not, however, appear to be any such act (*w*).

Licence, by
whom
granted.

The duty upon auctioneers' licences being a duty of excise, the granting of the licences and the collection of the duty are now, by the operation of 12 & 13 Vict. c. 1, under the control of the commissioners of inland revenue (*x*). By

(*t*) 17 & 18 Vict. c. 104.

(*u*) See Appendix, *post*, p. 388.

(*v*) See preceding page.

(*w*) It is perhaps due to an oversight of the legislature that the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), does not relieve any one selling by auction under its 43rd section from the obligation to take out an auctioneer's licence.

(*x*) 12 & 13 Vict. c. 1, s. 3. The 1st section of the act consolidated the boards of commissioners of excise and of stamps and taxes into one board of commissioners of inland revenue.

section 16 of the act just mentioned the licences are to be granted and signed by such person or persons as the commissioners appoint or authorize in that behalf. Application for a licence should be made at an inland revenue office, where the applicant will be furnished with the necessary instructions and a notice paper specifying the duties which he will have to pay. No particular form of application need be used; but, for the sake of convenience, a form of application is given in Part II. of this book (y).

To whom,
and how,
to apply
for licence.

Strictly speaking, as has been seen (z), an auctioneer who, having taken out a licence in one year, wishes to practise in the next is bound to procure a new licence ten days before his current one expires; and in former editions of this work, published since the date of 8 & 9 Vict. c. 15, twenty-one days' notice of intended renewal was stated to be still necessary under 6 Geo. IV. c. 81, s. 16 (a). Upon that view, however, it would seem that, as, in default of such notice, the new licence must bear the date of the application for it (b), and as all auctioneers' licences expire on each 5th of July (c), an auctioneer who should have once entered upon the twenty-one days without having given notice would for a year (d) be unable to renew his licence conformably to the law, and so would inevitably incur a forfeiture of £100 (e)—a much more serious result than that contemplated by the section in question of the act of Geo. IV. In practice, as a rule, no such notice is given, but the inland revenue au-

As to
notice of
intention
to renew
licence.

(y) P. 287, *post*, Form I. The form of a licence is also given on the same page, Form 2.

(z) P. 8, *supra*.

(a) See Appendix, *post*, p. 385.

(b) 6 Geo. IV. c. 81, s. 16.

(c) *Ibid.* and 8 & 9 Vict. c. 15, s. 4.

(d) 8 & 9 Vict. c. 15, s. 4.

(e) *Ibid.*

thorities forward to the auctioneer an intimation that his licence requires renewing, and the auctioneer applies and pays for a new licence at any time on or about the 5th of July (*f*).

Licence personal.	An auctioneer's licence can only be used by the holder, that is, the person to whom it is made out; and, as the holder cannot transfer it in his lifetime, so, after his death, it will not be available in the hands of his executors, or wife or child (<i>g</i>); and of two or more auctioneers in partnership each, to sell, must have a separate licence (<i>h</i>); though a distinct licence would not, perhaps, be requisite in the case of an auctioneer's clerk acting, upon a sale, under the immediate supervision of his master (<i>i</i>). On the other hand, the holder of an auctioneer's licence may pursue his calling upon as many different sets of premises as he chooses (<i>k</i>); and a licensed auctioneer may act as an appraiser and as a house agent, without taking out an additional licence for either purpose, since the statutes which impose a duty upon persons following those respective occupations expressly exempt licensed auctioneers (<i>l</i>).
Partners.	
Clerks.	
Premises.	
Licence includes appraiser's and house agent's licences.	
Additional licence, when required :	The act of 8 & 9 Vict. c. 15 (<i>m</i>), enabled licensed auctioneers, without any other than their auctioneers' licences, to sell by auction any goods for the sale of which

(*f*) A form of notice of intention to renew is to be found on p. 287, *post*, Form 3.

(*g*) Under 6 Geo. IV. c. 81, s. 21; see Appendix, *post*, p. 385.

(*h*) 6 Geo. IV. c. 81, s. 7.

(*i*) See *Commonwealth v. Harnden*, 19 Pickering, 482; cf. *Hodgson v. Flower*, 2 Camp. 288; *Scott v. Cousins*, L. R. 4 C. P. 177.

(*k*) 6 Geo. IV. c. 81, s. 10. But see *infra*, p. 16, as to hawker's licence.

(*l*) See 46 Geo. III. c. 43, s. 7; 24 & 25 Vict. c. 21, s. 13. For definitions of "appraiser" and "house agent," see 46 Geo. III. c. 43, ss. 4, 6; 8 & 9 Vict. c. 76, s. 1; and 24 & 25 Vict. c. 21, ss. 10, 13; Appendix, *post*, p. 392.

(*m*) S. 6.

a special excise licence was required by law ; but this privilege was found to lead to the excise laws being largely evaded under the cloak of auctioneers' licences, and it was eventually abolished by 27 & 28 Vict. c. 56, of which the 14th section enacts that " no licence taken out by any person to exercise or carry on the trade or business of an auctioneer shall authorize such person to deal in or sell, either on his own account or for his own benefit, or on account of, or for the benefit of, any other person, any commodities for the dealing in or selling of which an excise licence is required, except :—

Excep-
tions :

- "(1) Upon premises in respect of which the owner of such commodities shall have taken out and shall have in force at the time of the sale thereof the proper excise licence for the sale of such commodities ; provided a. Licensed premises of owner.
- "(2) That any such licensed auctioneer may sell by auction by sample in any town or place any such commodities as aforesaid, if the owner thereof shall be duly licensed for the sale of such commodities in the same town or place ; and provided also b. Certain sales by sample.
- "(3) That the commissioners of inland revenue may in their discretion authorize any licensed auctioneer to sell any such commodities by auction, where they shall be satisfied that the said commodities are the property of a private person and are not sold for profit or by way of trade (n) ; γ. Certain sales not for profit.

(n) The inland revenue regulations require that application for such authority should be made at least a week before the intended sale ; cf. foot-note to licence, p. 287, *post*.

Penalties. "And if any person shall sell by auction any such commodities contrary to or otherwise than is allowed by this section, he shall incur the penalties imposed upon person dealing in or selling such commodities without the excise licences required by law" (o).

Excisable articles. With the three important exceptions mentioned in the section an auctioneer will, therefore, like any other person, require a special excise licence to enable him to sell wine, spirits, beer, porter, cider, perry, sweets, made wines, mead, metheglin, methyated spirits, patent medicines (p), tobacco or game (q).

Caution. It must not be supposed that either the first or the second of the above exceptions will empower the auctioneer to sell excisable goods in other quantities, or to other persons, than might the licensed owner himself (r); or that in any case it will be competent to dispense with the formalities which the law requires to be observed in connection with the sale of such goods (s).

b. Hawker's licence. An auctioneer may not go from place to place carrying goods for sale, or exposing goods to sale, unless he is licensed as a hawker (t). M., of London, without a hawker's licence,

(o) See Bell and Dwelly's Laws of Excise, *passim*.

(p) See 27 & 28 Vict. c. 56, s. 6.

Cards. (q) The excise duty on licences to sellers of playing cards, not being makers thereof, was repealed by 33 & 34 Vict. c. 32, s. 3; that upon licences for exercising or carrying on the trade of a horse-dealer, by 37 & 38 Vict. c. 16, s. 11; that upon maltsters' licences, by 43 & 44 Vict. c. 20, s. 3. By a "Board's Order" of 21 July, 1877, auctioneers may sell plate by auction, under any circumstances, without special licence. As to the sale of foreign goods in bond, see 6 Geo. IV. c. 81, s. 12; 23 & 24 Vict. c. 113, s. 5; Appendix, *post*, pp. 384, 392.

Horses. (r) Whether a particular sale of excisable goods will be covered by the owner's licence, the auctioneer will, as a rule, be able to learn, either from the owner or from the licence.

Malt. (s) *E.g.*, upon the removal of spirits; see 2 & 3 Will. IV. c. 16, s. 7; 43 & 44 Vict. c. 24, ss. 105 *et seq.*

Plate. (t) See *R. v. Turner*, 4 B. & Ald. 510; *Dean v. King*, *ib.* 517;

Bonded goods.

took a room at Hastings, and sold there drapery goods, part of *Manson v. Hope*. the stock of a company, which were sent down to him directly from London ; he was held to have infringed the law (u). But it is apprehended that, where an auctioneer sells the goods of another, that will not be an act of hawking in the auctioneer which would not be one in the owner of the goods.

In London, many auctioneers are also brokers. Before any one can lawfully act as a broker in the city of London, he must, under a penalty of £100, have been formally admitted as one by the court of mayor and aldermen (v). But

c. Auctioneers acting as brokers.

Manson v. Hope (1862), 2 B. & S. 498 ; 31 L. J. M. C. 191 ; 8 Jur. N. S. 971 ; 6 L. T. N. S. 326 ; 10 W. R. 664 ; decided upon sections now repealed of 50 Geo. III. c. 41 ; cf. 24 & 25 Vict. (1861), c. 21, s. 9 (Appendix, post, p. 391), and 27 & 28 Vict. c. 18, Schedule B., *sub tit.* "Licences to hawkers and pedlars." No hawker's licence is required for When the sale of goods in a public mart, market or fair, legally established ; hawker's 50 Geo. III. c. 41, s. 5 ; see *Benjamin v. Andrews*, 5 C. B. N. S. 299 ; licence not 27 L. J. M. C. 310 ; or for the sale of goods wholesale ; 52 Geo. III. needed. c. 108, s. 1 ; or of coals by retail in carts &c. ; *ib.* s. 2 ; or of fish, fruit or victuals ; 50 Geo. III. c. 41, s. 23 ; see *R. v. Hodgkinson*, 10 B. & C. 74 ; 5 Man. & R. 162. The duty upon licences to foot-hawkers was Foot-repealed by 33 & 34 Vict. c. 32, s. 3. Formerly hawkers were prohibited hawkers. from selling goods by auction, either themselves or by an auctioneer, at any place in which they were not householders, or which was not their usual place of abode ; 50 Geo. III. c. 41, s. 7 ; but this restriction was removed by 29 & 30 Vict. c. 64, s. 12, "so far as regards the selling by auction by any trading person duly licensed as an auctioneer ;" and see now 35 & 36 Vict. c. 97. See also *Hodgson v. Flower*, 2 Camp. 288 ; *Grejj v. Smith*, L. R. 8 Q. B. 302 ; 42 L. J. M. C. 121 ; *Howard v. Lupton*, L. R. 10 Q. B. 598. As to hawkers generally, see 50 Geo. III. c. 41 ; 52 Geo. III. c. 108 ; 23 & 24 Vict. c. 111 ; 24 & 25 Vict. c. 21 ; 27 & 28 Vict. cc. 18, 56 ; 29 & 30 Vict. c. 64 ; 33 & 34 Vict. c. 32 ; 34 & 35 Vict. c. 96.

(u) *Manson v. Hope*, *ubi supra*.

(v) See 6 Anne, c. 68 (c. 16 in Ruffhead) ; 57 Geo. III. c. 1x. ; 33 & 34 Vict. c. 60 ; see also *Cope v. Rowlands*, 2 M. & W. 149 ; *Milford v. Hughes*, 16 M. & W. 174 ; *Pidgeon v. Burslem*, 3 Ex. 465 ; 18 L. J. Ex. 193 ; *Smith v. Lindo*, 5 C. B. N. S. 587 ; 27 L. J. C. P. 335 ; *Scott v. North*, L. R. 2 C. P. 270 ; *Scott v. Cousins*, L. R. 4 C. P. 177. A sum

he will not incur the penalty by merely selling by auction (*w*).

Licences to be promptly produced for inspection.

Non-production of auctioneer's licence at time of auction.

The holder of a licence should be constantly ready to produce it to the proper authorities. A person licensed to carry on a business or to sell goods is liable to a penalty of £20, if he does not produce and deliver his licence to an officer of excise demanding it, within a reasonable time after such demand has been made (*x*); and if any person acting as an auctioneer, and required to take out a licence as a person carrying on the business of an auctioneer, does not, at the time of a sale by auction, on demand by any officer of excise or customs, or any officer of stamps and taxes, produce and show to such officer a proper licence to him granted and then in force, or does not immediately deposit with such officer the sum of £10, he may be arrested and detained by an officer of the peace (*y*), conveyed before a magistrate and committed to gaol for any time not exceeding one calendar month; and such imprisonment or deposit will not prejudice or affect any proceedings for the recovery of the penalty for acting as an auctioneer without a licence; but if a person who has made such deposit produces, within a week from the date of the sale, to the officer with whom he deposited the money a proper auctioneer's licence to him granted and

Dues payable by brokers.

of £5 is payable to the city chamberlain upon admission, and a like sum annually; 6 Anne, c. 68; 57 Geo. III. c. 1x.

(*w*) *Wilkes v. Ellis*, 2 H. Bl. 555. The difference between an auctioneer and a broker is twofold: an auctioneer sells at public auction, a broker by private bargain; and an auctioneer sells only, a broker both buys and sells; see Story, Ag. § 27. As to the difference between brokers and factors, see *Baring v. Corrie*, 2 B. & Ald. 137; Sm. Merc. Law, 106, 107; as to brokers and factors generally: 2 St. Com. 76 *et seq.*; Macculloch's Commercial Dictionary, 204 *et seq.*, 601 *et seq.*; Russ. Merc. Ag. *passim*.

(*x*) 6 Geo. IV. c. 81, s. 28.

(*y*) It will not escape notice that, although the person to demand production of the licence is a revenue officer, the arrest must be made by an officer of the peace.

in force at the time of the sale, the money is to be immediately returned to him (z).

An auctioneer is not obliged, when licensed, to put up his name, with "licensed auctioneer" after it, over his door, as he would have to do, if he were a licensed person required by the excise laws to make entry of his premises (a); but he is forbidden, under a penalty of £20, to have up on his premises, at any time when he does not actually hold an auctioneer's licence, any words or letters importing, either that he is licensed as an auctioneer, or even that he is an auctioneer (b).

As to putting up name and occupation.

The auctioneer's relations to the revenue are not limited to questions of licence. He will run the risk of being mulcted in yet another penalty of £20, if he does not, during the whole time of holding a sale by auction, exhibit his full Christian name, surname and residence in large letters on a ticket or board affixed or suspended in a conspicuous part of the room or place where the sale is held (c).

Board to be exhibited during sale.

(z) 8 & 9 Vict. c. 15, s. 8. For form of warrant of commitment in such case, see Form 4, p. 288, *post*.

(a) 6 Geo. IV. c. 81, s. 25.

(b) *Ibid*.

(c) 8 & 9 Vict. c. 15, s. 7. As to the recovery of penalties, and the collection and management of excise duties generally, see 7 & 8 Geo. IV. of penal- c. 53; 4 & 5 Will. IV. c. 51; 4 Vict. c. 20; 11 & 12 Vict. cc. 43, 121; ties, and 15 & 16 Vict. c. 61; 18 & 19 Vict. c. 78; 23 & 24 Vict. c. 113; 26 excise Vict. c. 7; 26 & 27 Vict. c. 33; 28 & 29 Vict. cc. 96, 104; 31 & 32 matters Vict. c. 124; 42 & 43 Vict. c. 49; 43 & 44 Vict. cc. 19, 20, 24; *R. v. Commissioners of Excise*, 2 T. R. 381 (*mandamus*); *R. v. Turner*, 5 M. & S. 206 (burden of proof of having licence; cf. Paley on Convictions, 6th ed., 129, and the cases cited *arguendo* in *Toleman v. Portbury*, L. R. 5 Q. B. 291); *R. v. Beadle*, 7 E. & B. 492; 26 L. J. M. C. 111 (costs of appeal). As to mitigation of penalties: 7 & 8 Geo. IV. c. 53, s. 78; 22 Vict. c. 32; rewards to informers: 6 Geo. IV. c. 81, s. 29; 7 & 8 Geo. IV. c. 53, s. 103; 31 & 32 Vict. c. 124, ss. 1, 2.

CHAPTER II.

THE AUCTIONEER'S AGENCY IN GENERAL, AND PARTICULARLY HIS AUTHORITY TO SELL . . . . .	20

Auc-
tioneer
generally
an agent.

Whose
agent he is.

AN auctioneer may, it seems, sell his own property by auction without disclosing that he is the owner (a); but generally he acts as agent for another.

When so employed in his professional capacity, he is primarily, and until the fall of the hammer exclusively, the agent of the vendor; but upon the descent of the hammer he becomes the agent of the highest bidder also, to write down the name of the latter as purchaser, and his memorandum of the transaction will bind both parties, as being a note in writing sufficiently signed within the Statute of Frauds (b).

His autho-
rity, how
conferred.

No written authority is necessary to enable him to perform any act within the scope of his agency (c).

(a) *Flint v. Woodin*, 9 Hare, 618; 16 Jur. 719; Sugd. 44; Dart, 177. An auctioneer trustee in bankruptcy cannot, nor can his partner, act as auctioneer in the sale of the bankrupt's estate without the consent of the committee of inspection; G. R. 1870, r. 119.

(b) *Simon v. Motivos*, 3 Burr. 1921; 1 Bl. R. 599; *Hinde v. Whitehouse*, 7 East, 558; 3 Smith, 528; *Buckmaster v. Harrop*, 13 Ves. 472; *Emmerson v. Heelis*, 2 Taunt. 38; *White v. Proctor*, 4 Taunt. 209; *Kemys v. Proctor*, 3 V. & B. 57; 1 J. & W. 350; *Farebrother v. Simmons*, 5 B. & Ald. 333; *Bird v. Boulter*, 4 B. & Ad. 443; 1 N. & M. 313; *Eden v. Blake*, 13 M. & W. 615, 619; *Peirce v. Corf*, L. R. 9 Q. B. 214; 43 L. J. Q. B. 52; Story, Sal. § 79; cf. *Wood v. Midgley*, 2 Sm. & G. 315. "He is an agent for each party in different things, but not in the same thing. When he prescribes the rules of bidding and the terms of the sale, he is the agent for the seller; but when he puts down the name of the buyer, he is agent for him only"—per Heath, J., in *Williams v. Millington*, 1 H. Bl. 81, 85.

Williams
v. Milling-
ton.

(c) See *Rucker v. Cammeyer*, 1 Esp. 105; *Coles v. Trecothick*, 9 Ves.

Mere implication will suffice, without express words, to invest an auctioneer with authority (*d*). Where A., without objection, suffered his goods to be sold by an officer at public auction to satisfy an execution against a third person in whose possession they were at the time, such conduct was held, in favour of the purchaser, to justify the conclusion that A. had authorized the sale (*e*); and it is said that, if the owner of goods send them to an auction-room, he will be bound by a sale to a *bonâ fide* purchaser, because an authority to sell will be presumed against him (*f*).

A want of original authority may be supplied by the person whose authority was assumed subsequently ratifying the unauthorized act (*g*). Where A., an auctioneer, entered into and signed an agreement as agent of B., and B. shortly afterwards signed it with the words: "I hereby sanction this and approve of A.'s having signed it on my behalf," it was held that A. was not personally liable (*h*). Simple acquiescence, with knowledge of the fact, but without any overt

Implied
authority.

Constructive
authority.

234, 250; 1 Smith, 233; *Mortlock v. Buller*, 10 Ves. 292, 311; *Chapman v. Partridge*, 5 Esp. 256.

(*d*) *Smith v. East India Co.*, 16 Sim. 76; *Pike v. Wilson*, 1 Jur. N. S. 59, where an authority to sell given to an auctioneer was held under the circumstances to justify a sale by auction; *Pole v. Leask*, 28 Beav. 562; 33 L. J. Ch. 155; Dart, 184.

(*e*) *Pickard v. Sears*, 6 A. & E. 469; 2 N. & P. 488. See Story, Ag. § 91.

(*f*) Chit. Con. 190. An estate agent instructed as to price has no implied authority to sign an open contract on behalf of his principal; *Hamer v. Sharp*, L. R. 19 Eq. 108; 44 L. J. Ch. 53; Leake, 523.

(*g*) *Kinnitz v. Surry*, Paley, P. & A. 171; *Cooper v. Smith*, 15 East, 103; *Soames v. Spencer*, 1 D. & R. 32; *Maclean v. Dunn*, 4 Bing. 722; 1 Moo. & P. 761; *Gosbell v. Archer*, 2 A. & E. 507; 4 N. & M. 485; 1 H. & W. 31; *London & Birmingham Ry. Co. v. Winter*, Cr. & Ph. 57; *De Beil v. Thompson*, 3 Beav. 469; *Foster v. Bates*, 12 M. & W. 226; 1 D. & L. 400; 13 L. J. Ex. 88; 7 Jur. 1093; *Wilson v. Tummson*, 6 Man. & G. 236; 6 Sco. N. R. 894; 1 D. & L. 513; 12 L. J. C. P. 306; *Blackwood v. Borrowes*, 4 Dru. & War. 441, 472; Leake, 276, 463.

(*h*) *Spittle v. Lavender*, 2 B. & B. 452; 5 Moore, C. P. 270.

act of adoption, may raise a presumption of assent and make the contract binding on the alleged principal (*i*). Nor is it necessary that the principal should have been competent to enter into the agreement at the time when it was made, if his title, when he ratifies the agreement, relates back to that time; for instance, an administrator may adopt a contract entered into before the grant of letters of administration (*j*). But a contract entered into by A. expressly as agent for B. cannot be adopted by C. (*k*).

The authority to sell should be in writing.

It is, however, very desirable that the auctioneer's authority to sell should be in writing (*l*); and if the principal be a corporation, then it should be under the corporate seal (*m*). Where there is merely a parol authority, it will frequently be difficult to prove the existence and extent of it (*n*); and this consideration applies equally to the case of the auctioneer being employed as agent to purchase the property (*o*). The terms upon which the sale is to be conducted should be distinctly arranged, especially if there be any intention of restricting the sale, or of buying in the property unless it produces a certain amount (*p*). If a

(*i*) *Bigg v. Strong*, 3 Sm. & G. 592; 4 Jur. N. S. 108, 983.

(*j*) *Foster v. Bates*, 12 M. & W. 226; 1 D. & L. 400; 13 L. J. Ex. 38; 7 Jur. 1093; *Hood v. Lord Barrington*, L. R. 6 Eq. 218.

(*k*) *Wilson v. Tummon*, 6 Man. & G. 236; 6 Sco. N. R. 894; 1 D. & L. 518; 12 L. J. C. P. 306; Dart, 188.

(*l*) See forms of authority, *post*, p. 290, Forms 1, 2. See also form of power of attorney to sell an estate, *ibid.*, Form 3.

(*m*) *Mayor of Kidderminster v. Hardwick*, L. R. 9 Ex. 13; 43 L. J. Ex. 9.

(*n*) Sugd. 145.

(*o*) The seller's agent cannot act as agent for the buyer, unless expressly authorized by the latter; *Durrell v. Evans*, 1 H. & C. 174; 31 L. J. Ex. 337; 7 L. T. N. S. 97; 10 W. R. 665; 7 Jur. N. S. 585; 9 Jur. N. S. 104; *Murphy v. Boese*, L. R. 10 Ex. 126; cf. *Graham v. Musson*, 7 Sco. 769; 5 Bing. N. C. 603; *Graham v. Fretwell*, 4 Sco. N. R. 25; 3 Man. & G. 368.

(*p*) See form of letter to vendor for instructions as to conduct of sale, *post*, p. 291, Form 4.

principal gives an order to an agent in terms fairly susceptible of two different meanings, and the agent *bonâ fide* adopts one of such meanings and acts upon it, the principal cannot repudiate the act of the agent as unauthorized because he had meant the order to be read in the other sense (*q*); and it would require a strong case to impeach a sale upon the ground that the seller did not intend his estate to be sold under a price greater than the amount realized (*r*).

The consent of the highest bidder to be bound by the auctioneer's entry is ordinarily implied by his bidding aloud (*s*); but a private arrangement between seller and buyer as to the mode of payment supersedes the authority of the auctioneer to bind the buyer in that respect by signing for him (*t*).

The authority to bind purchaser implied by bidding.

On sales of estates the auctioneer's agency frequently extends no further than conducting the sale under the direction of a solicitor. On sales of goods the business is commonly entrusted wholly to the auctioneer.

Extent of auctioneer's authority in practice.

(*q*) *Ireland v. Livingston*, L. R. 5 H. L. 395; 36 L. J. Q. B. 50.

(*r*) Sugd. 44, referring to *Pike v. Wilson*, 1 Jur. N. S. 59. Yet where a vendor made a *bonâ fide* mistake as to the authority which he had given to the auctioneer, and the property was knocked down to the purchaser for a less sum than the vendor considered that he had authorized the auctioneer to sell at, the Court refused to decree specific performance at the instance of the purchaser; *Day v. Wells*, 30 Beav. 220; 7 Jur. N. S. 1004; cf. *Mason v. Armitage*, 13 Ves. 25.

(*s*) *Emmerson v. Heelis*, 2 Taunt. 38; *White v. Proctor*, 4 Taunt. 209.

(*t*) *Bartlett v. Purnell*, 4 A. & E. 792; 6 N. & M. 299; 2 H. & W. 19; *Grice v. Kenrick*, L. R. 5 Q. B. 340; 39 L. J. Q. B. 177; 22 L. T. N. S. 743; 18 W. R. 1155; Leake, 277. Upon a subsequent sale by private contract, though under the same conditions, the authority of the auctioneer to bind the purchaser by signing for him is no greater than that of any other agent; *Mews v. Carr*, 1 H. & N. 484; 26 L. J. Ex. 39; cf. *Oliphant's Law of Horses &c.*, 41. *Wood v. Midgley*, 2 Sm. & G. 115, is an apparent decision to the contrary; but it is perhaps to be regretted that that case was not reported on appeal.

Auctioneer's authority on sale by private contract.

His agency
a general
agency.

The auctioneer's agency for the seller is a general agency (*u*) ; and consequently—subject, as between him and his principal, to his special instructions, and, as regards third persons, to their having notice of his special instructions—whatever acts are usually done by auctioneers, whatever rights are usually exercised by them, and whatever duties are usually imposed upon them, all such acts, rights and duties are deemed incidents of his authority to sell (*v*). Most of such acts, rights and duties have been so often brought to the notice of courts of justice that they are now judicially recognized (*w*). Where this is not the case, the fact of their being usual will have to be established by evidence.

What the
authority
to sell
comprises.

Where no solicitor is employed, the auctioneer may, it would seem, introduce special conditions of sale (*x*). Goods are privileged from distress while on the premises of an auctioneer for the purpose of being sold by auction (*y*), although the place of sale is merely hired for the occasion (*z*) ; but if the goods which an auctioneer is commissioned to sell, being upon premises occupied by his principal, are threatened

(*u*) *Howard v. Braithwaite*, 1 Ves. & B. 202, 210 ; Leake, 522.

(*v*) Story, Ag. § 106 ; Sm. Merc. Law, 126 ; Broom, C.L., 523 ; Dart, 183 ; *Russell v. Palmer*, 2 Wils. 325 ; *Pitt v. Yalden*, 4 Burr. 2060 ; *Moore v. Mourgue*, Cowp. 480 ; *Warwicke v. Noakes*, Peake, N. P. C. 98 ; *Russell v. Hankey*, 6 T. R. 12 ; *Foster v. Pearson*, 1 C. M. & R. 849 ; 5 Tyrw. 255 ; *Sutton v. Tatham*, 10 A. & E. 27 ; *Collen v. Gardner*, 21 Beav. 542.

(*w*) Story, Ag. § 106.

(*x*) Sugd. 45, referring to *Pike v. Wilson*, 1 Jur. N. S. 59. Cf. *Denev v. Daverell*, 3 Camp. 451. But see Dart, 178 ; 1 Dav. 508 ; cf. Story, Ag. § 107 ; *Hinde v. Whitehouse*, 7 East, 558.

(*y*) *Adams v. Grane*, 1 C. & M. 380 ; 3 Tyrw. 326 ; 2 L. J. Ex. 105 ; *Williams v. Holmes*, 8 Ex. 861 ; 22 L. J. Ex. 283 ; cf. *Miles v. Furber*, L. R. 8 Q. B. 77 ; 21 W. R. 262.

(*z*) *Brown v. Arundell*, 10 C. B. 54 ; 20 L. J. C. P. 30 ; or although the occupation of the premises has been acquired by the auctioneer by an act of trespass ; *ibid.* ; but see *Lyons v. Elliott*, 1 Q. B. D. 210, 215 ; 45 L. J. Q. B. 159. The privilege does not extend to goods on premises not in the occupation of the auctioneer ; *Lyons v. Elliott*, *ubi supra*.

with a lawful distress for rent, though due from a third person, and, in order to prevent the distress from being made before sale, the auctioneer promise to pay the rent, the principal, it seems, will be bound to hold him harmless upon such promise, if a reasonable one to be made under the circumstances (a). An auctioneer to whom goods are entrusted for sale can maintain an action against a stranger who takes them out of his possession (b). The auctioneer's verbal declarations at the sale, at least where they do not contradict the written particulars and conditions, are, it is said, admissible against, and binding on, his employer (c). No action lies against an auctioneer for selling a chattel at the highest price bid for it, contrary to the owner's express directions not to let it go under a larger sum named (d). An auctioneer has a special property in the goods which he is employed to sell, with a lien upon them and upon the price, when paid, for the charges of the sale and his commission; he may make the contract of sale in his own name; and he can sue the purchaser for the price (e); as, on the other

(a) See the judgments of Blackburn and Mellor, JJ., in *Sweeting v. Turner*, L. R. 7 Q. B. 310; 41 L. J. Q. B. 58.

(b) *Broom*, C. L., 816; cf. *Holmes v. Tutton*, 5 E. & B. 65; 24 L. J. Q. B. 346; 1 Jur. N. S. 975.

(c) Story, Ag. § 107; cf. *Eden v. Blake*, 13 M. & W. 614; 14 L. J. Ex. 194. But see *post*, Chapter X.; and *Campbell*, Sale & Ag. 423.

(d) *Bexwell v. Christie*, 1 Cowp. 395. *Aliter*, if the owner directs the auctioneer to set up the chattel at a particular price and not lower; *ibid*. Cf. Chapter VII., *post*.

(e) *Williams v. Millington*, 1 H. Bl. 81; *Coppin v. Craig*, 7 Taunt. 243; *Robinson v. Rutter*, 4 E. & B. 954; 24 L. J. Q. B. 250; 1 Jur. N. S. 823; 2 Sm. L. C. 399; *Paley*, P. & A. 362; Story, Ag. § 27; *Leake*, 522; but not where the right of a third person intervenes and is established; *Dickenson v. Naul*, 4 B. & Ad. 638. The auctioneer has no such right to sue in his own name on a sale of real estate as on a sale of goods; on the sale of real estate the right to sue depends on the written contract alone; *Cherry v. Anderson*, 1 R. 10 C. L. 204. But, though known to be acting for a principal, he may recover for the use and occupation of land hired from him under a verbal agreement; *Fisher v. Marsh*, 6 B. & S. 411; 34 L. J. Q. B. 177; 11 Jur. N. S. 795; 12 L. T. N. S. 604;

Rights of
third
parties.
Real
estate.

hand, he is deemed personally a vendor, unless at the time of sale he discloses the name of his principal (*f*). A power to sell goods *primâ facie* includes a power to receive the proceeds of the sale (*g*); but where, on a sale of growing timber, the conditions provided that part of the price should be paid down as a deposit and the residue at a future day, it was held that the auctioneer's authority to receive payment did not extend beyond the deposit (*h*).

- Wright v. Dannah.* 13 W. R. 834. The auctioneer cannot sue a party for whom he personally signs as agent, the rule being that neither of two contracting parties can act as agent for the other for the purpose of signing; *Wright v. Dannah*, 2 Camp. 203; *Farebrother v. Simmons*, 5 B. & Ald. 333; *Sharman v. Brandt*, L. R. 6 Q. B. 720; 40 L. J. Q. B. 312; cf. *Rayner v. Linthorn*, 1 R. & M. 325. But he can maintain the action, when the entry has been made by his clerk with the authority of the defendant; *Bird v. Boulter*, 4 B. & Ad. 443; 1 N. & M. 313.
- Bird v. Boulter.* (*f*) *Hanson v. Roberdeau*, Peake, N. P. C. 163; *Ex parte Hartop*, 12 Ves. 352; *Jones v. Littledale*, 6 A. & E. 486; 1 N. & P. 677; *Franklyn v. Lamond*, 4 C. B. 637; 16 L. J. C. P. 221; 11 Jur. 780; *Woolfe v. Horne*, 2 Q. B. D. 355; 46 L. J. Q. B. 536; cf. Story, Ag. § 267; *Thomson v. Davenport*, 2 Sm. L. C. 364, 379. Perhaps, generally, the right to sue involves a corresponding liability to be sued; *Poll. Con.* 430; *Leake*, 522; cf. *Fairlie v. Fenton*, L. R. 5 Ex. 169; 39 L. J. Ex. 107. Moreover, it seems that, where the owner is undisclosed, an auctioneer who undertakes to, but does not, sell without reserve, is liable on his undertaking to the highest *bond fide* bidder; *Warlow v. Harrison*, 1 E. & E. 295, 309; 28 L. J. Q. B. 18; 29 L. J. Q. B. 14; 5 Jur. N. S. 313; 6 Jur. N. S. 66. But it appears to be otherwise, if the owner is disclosed, and the auctioneer only follows his instructions; *Mainprice v. Westley*, 6 B. & S. 421; 34 L. J. Q. B. 229; 13 L. T. N. S. 560; 14 W. R. 9. Simply advertising a sale is a mere declaration and does not amount to a contract with any one acting upon it, nor to a warranty that all the articles advertised will be put up for sale; *Harris v. Nickerson*, L. R. 8 Q. B. 286; 42 L. J. Q. B. 171; 28 L. T. N. S. 410; 21 W. R. 635; cf. *Spencer v. Harding*, L. R. 5 C. P. 561; 39 L. J. C. P. 332; *Richardson v. Silvester*, L. R. 9 Q. B. 34; 43 L. J. Q. B. 1.
- (*g*) *Williams v. Millington*, 1 H. Bl. 81; *Brown v. Staton*, 2 Chit. 353; *Capel v. Thornton*, 3 C. & P. 352; *Leake*, 912. According to an American case a power to sell goods only confers a power to receive the price at the time of the sale, but not subsequently, unless there be some other proof of authority than a mere power of sale; *Seiple v. Irwin*, 30 Penn. St. 513.
- (*h*) *Sykes v. Giles*, 5 M. & W. 645; see *Leake*, 912; cf. *Oliphant's Law of Horses &c.*, 51.

An auctioneer employed under a parol agreement to sell goods has not such an interest as will make the licence to enter upon the owner's premises for that purpose irrevocable (i). An auctioneer put into possession of fixtures attached to the freehold, for the purpose of selling them, the purchaser being bound to detach and remove them, has been held not to have such a possession as would support trespass *de bonis asportatis* for their wrongful removal (j). On an employment of an auctioneer to sell by auction there is no employment to sell by private contract, if the public sale proves abortive; and evidence of a custom to that effect among auctioneers is inadmissible (k). An agent employed to sell an estate has not *ipso facto* authority to receive the purchase-money (l): unless specially authorized, he has no power to receive more than the deposit (m). The auctioneer has only authority to receive cash, and not to give credit to the vendee, or to take a bill of exchange or other

What
does not
include.

(i) *Taplin v. Florence*, 10 C. B. 744; 20 L. J. C. P. 137; 15 Jur. 402; *Broom*, C. L. 425.

(j) *Davis v. Danks*, 3 Ex. 435; 18 L. J. Ex. 213.

(k) *Marsh v. Jelf*, 3 F. & F. 234; cf. *Drury v. Defontaine*, 1 Taunt. 131; *Bloxsome v. Williams*, 3 B. & C. 232. "An agent or trustee," says Mr. Dart (V. & P. 65), "simply authorized to sell by public auction, either generally or for a specified sum, cannot, whatever price be offered, sell by private contract; *Daniel v. Adams*, Amb. 495; *In re Loft*, 8 Jur. 206; Sugd. 61; but in one or two recent cases, after an abortive attempt to sell by public auction subject to a reserved bidding, a sale by the trustee or agent by private contract at the reserved price has been upheld, and the title has, under special circumstances, been forced on the purchaser; *Else v. Barnard*, 28 Beav. 228; *Bousfield v. Hodges*, 33 Beav. 90; *sed quere*. And an express authority to sell by private contract would not, it is conceived, justify a sale by auction, unless the authority were to sell for a specified sum, and the price obtained at the auction, after payment of the incidental expenses, exceeded or equalled that amount." Cf. Story, Ag. § 102.

(l) *Mynn v. Joliffe*, 1 Moo. & R. 326; cf. *Pole v. Leask*, 28 Beav. 562; 33 L. J. Ch. 155.

(m) *Sykes v. Giles*, 5 M. & W. 645. Cf. *post*, p. 171.

security from him (*n*). An auctioneer authorized to sell is not justified in selling to a firm in which he is a partner, or a company of which he is a member; still less in purchasing for himself (*o*). The auctioneer's authority ceases as soon as the sale has taken place (*p*); and, therefore, after the sale, unless specially empowered, he cannot rescind (*q*) or vary the contract (*r*), or deal with the purchaser as to the terms upon which the title is to be made (*s*).

Warranty
by auc-
tioneer.

Whether an auctioneer has *virtute officii* a right to warrant

(*n*) *Story*, Ag. § 209; *Sugd.* 48; *Williams v. Millington*, 1 H. Bl. 81; *Earl of Ferrers v. Robins*, 2 C. M. & R. 152; 1 Gale, 70; 5 Tyrw. 705; *Williams v. Evans*, L. R. 1 Q. B. 352; 35 L. J. Q. B. 111; 13 L. T. N. S. 753; 14 W. R. 330; cf. *Wiltshire v. Sims*, 1 Camp. 258; *Sykes v. Giles*, 5 M. & W. 645. But if he accepts the purchaser's I. O. U. for the money, even though he does so with the vendor's consent, it seems that he may sue upon it in his own name; *Cleave v. Moors*, 3 Jur. N. S. 48; and see *post*, p. 173, as to cheques.

Purchase
by auc-
tioneer.

(*o*) *Salomons v. Pender*, 3 H. & C. 639; 34 L. J. Ex. 95; 11 Jur. N. S. 432; 12 L. T. N. S. 267; 13 W. R. 637; *Story*, Ag. § 210; *Oliver v. Court*, Dan. 301; 8 Price, 127; *Baskett v. Cafe*, 4 De G. & Sm. 388; *Sugd.* 688; cf. *Crowe v. Ballard*, 3 Bro. Ch. 117; *Lord Hardwicke v. Vernon*, 4 Ves. 411; *Ex parte Hughes*, 6 Ves. 617; *Coles v. Trecothick*, 9 Ves. 234, 248; 1 Smith, 233; *Huguenin v. Basely*, 14 Ves. 273; *Whitcomb v. Minchin*, 5 Madd. 91; *Lees v. Nuttall*, 1 Russ. & M. 53; *Taylor v. Salmon*, 4 My. & C. 134. But the auctioneer is not absolutely disqualified from purchasing for himself, and the transaction may be sustained by evidence that the vendor's interests have been sufficiently guarded; *Dart*, 35; *Morse v. Royal*, 12 Ves. 355; note to *Massey v. Davies*, 1 Hov. Supp. to Ves. jun. 269; Sm. Merc. Law, 109, 110. When a person cannot purchase on his own account, he cannot buy as agent for a third person; and perhaps he cannot even employ a third person to contract or bid on behalf of a stranger; *Dart*, 31; *Coles v. Trecothick*, *ubi supra*; *Ex parte Bennett*, 10 Ves. 381, 400; *Gregory v. Gregory*, 2 Coop. G. 201, 204; *Sugd.* 690; *Lewin*, 440. See also *post*, p. 125, note (*x*).

(*p*) *Seton v. Slade*, 7 Ves. 276; *Sykes v. Giles*, 5 M. & W. 645; *Leake*, 277; *Broom*, C. L. 416. As to the termination of his agency for the purchaser, see *Mews v. Carr*, 1 H. & N. 484; 26 L. J. Ex. 39; cf. *Wood v. Midgley*, 2 Sm. & G. 115; and *supra*, p. 23, note (*t*).

(*q*) *Nelson v. Aldridge*, 2 Stark. 435.

(*r*) *Blackburn v. Scholes*, 2 Camp. 343.

(*s*) *Sykes v. Giles*, 5 M. & W. 645; *Story*, Ag. § 108.

goods does not seem to be perfectly clear upon the authorities (*f*).

An auctioneer employed to sell must himself sell the property, and cannot, without special authority, delegate the sale to another : *vicarius non habet vicarium* (*u*). But as regards subsidiary matters, the rule is that, when from the nature of an agent's trust it is not to be expected that he should accomplish it all by his own personal exertions, he will be allowed to employ others to assist him (*v*). The clerk of an auctioneer has, in general, no authority to bind his master's principal by signing (*w*). Very slight evidence of assent will, however, suffice to conclude either the vendor or the purchaser by the signature of the clerk (*x*). But the signature of the clerk signing merely "as witness" to the signature of the purchaser will not charge the vendor (*y*).

(*f*) Story, Ag. p. 115, n. 5; cf. Add. Con. 503; and see Chapter VI. post, pp. 119, 130.

(*u*) Sugd. 44; Broom's Legal Maxims, 5th ed. 839; cf. Roll. Abr. 668; *Coles v. Trecothick*, 9 Ves. 234, 251; 1 Smith, 233; *Solly v. Rathbone*, 2 M. & S. 298; *Cockran v. Irlam*, *ib.* 301; *Catlin v. Bell*, 4 Camp. 183; *Schmaling v. Thomlinson*, 6 Taunt. 147; 1 Marsh. 500; *Henderson v. Barnewall*, 1 Y. & J. 387; *Doe d. Rhodes v. Robinson*, 4 Sco. 396; 3 Bing. N. C. 677; 3 Hodges, 84; 1 Jur. 356; *Clark v. Dignum*, 3 M. & W. 319; 1 H. & H. 166; 2 Jur. 419. An exception to the rule *delegatus non potest delegare* occurs when the highest bidding at an auction is made by an agent; in such a case the principal will be bound by the auctioneer signing on his behalf under the implied authority of the agent; *White v. Proctor*, 4 Taunt. 207; *Kenworthy v. Schofield*, 2 B. & C. 945.

(*v*) Sm. Merc. Law, 104; *Goswill v. Dunkley*, 2 Str. 680; *Bromley v. Cawwell*, 2 B. & P. 438; *Gosbell v. Archer*, 2 A. & E. 500; 4 N. & M. 485; 1 H. & W. 31; *Moon v. Guardians of Witney Union*, 5 Sco. 1; 3 Bing. N. C. 814; 3 Hodges, 206.

(*w*) *Coles v. Trecothick*, 9 Ves. 234; 1 Smith, 233; *Blore v. Sutton*, 3 Mer. 237; *Burnell v. Brown*, 1 J. & W. 168. But see post, pp. 114, 154-6.

(*x*) *Coles v. Trecothick*, 9 Ves. 234, 250; 1 Smith, 233; *Bird v. Boulter*, 4 B. & Ad. 443; 1 N. & M. 313; cf. *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52; and see Dart, 181.

(*y*) *Gosbell v. Archer*, 2 A. & E. 500; 4 N. & M. 485; 1 H. & W. 31. As to the auctioneer's responsibility for the acts of his subordinates, see *infra*, p. 87.

Revoca-
tion of
authority ;

—by
seller ;

—by
bidder ;

Before the fall of the hammer either party may revoke the auctioneer's authority (z). Every bidding is but an offer on one side, which is binding on neither, until it receives assent (a) ; the general rule being that an offer may always be retracted before acceptance (b). The authority to sell may be revoked, although the auctioneer was commissioned to sell without reserve and has advertised the sale to be so made (c) ; and the revocation is valid against parties dealing without knowledge of it (d). A bidder may retract his bidding, although the conditions of sale provide that the highest bidder shall be the purchaser (e), or even that no person shall retract his bidding (f) ; but on a sale by order of the Court such last-mentioned condition is binding upon the persons who consent to the sale and upon their agents (g). The retraction must be made loud enough to be heard by the auctioneer ; otherwise it amounts to nothing and is the same as a thought confined within the breast (h). It may be doubted, indeed, whether the bidder may not retract his offer, in those cases where a memorandum is required by the Statute of Frauds, at any time before the written entry is actually made by the auctioneer (i).

(z) Sugd. 13 ; *Payne v. Cave*, 3 T. R. 148 ; *Manser v. Back*, 6 Hare, 443 ; *Taplin v. Florence*, 10 C. B. 744 ; 20 L. J. C. P. 137 ; 15 Jur. 402 ; cf. *Smart v. Sandars*, 3 C. B. 380 ; 5 C. B. 895 ; 16 L. J. C. P. 39 ; 10 Jur. 841.

(a) *Payne v. Cave*, 3 T. R. 148.

(b) *Routledge v. Grant*, 4 Bing. 653 ; 1 Moo. & P. 717 ; 3 C. & P. 267 ; *Head v. Diggon*, 3 M. & B. 97 ; cf. *Byrne v. Van Tienhoven*, 5 C. P. D. 344, 347 ; 49 L. J. C. P. 316.

(c) *Warlow v. Harrison*, 1 E. & E. 295, 309 ; 28 L. J. Q. B. 18 ; 29 L. J. Q. B. 14 ; cf. *Mason v. Armitage*, 13 Ves. 25.

(d) *Manser v. Back*, 6 Hare, 443.

(e) *Payne v. Cave*, 3 T. R. 148.

(f) Sugd. 14 ; Leake, 42 ; cf. Dart, 124.

(g) *Freer v. Rimmer*, 14 Sim. 391.

(h) *Jones v. Nanney*, M'Cle. 39 ; 13 Price, 103 ; Morton, V. & P. 152.

(i) 3 Stark. Ev. 3rd ed. 1196 ; and cf. note to *Heyman v. Neale*, and

An auctioneer cannot compel specific performance of an agreement for the sale by him of a collection of works of art, though he paid down a sum of money at the time when the agreement was signed, and the advance was to be repaid to him out of the proceeds of the sale (*j*); but if goods are deposited in the hands of an auctioneer to be sold by him in order that he may repay himself his advances upon them, the authority, being coupled with an interest, cannot be revoked (*k*); and if the auctioneer at a sale is authorized to receive the purchase-money, a direction from his principal to pay it to a third party cannot, if given for valuable consideration, be revoked without the consent of such third party (*l*).

—where
authority
coupled
with an
interest;

A derivative authority cannot, generally, mount higher, or exist longer, than the authority whence it issued (*m*). Therefore, if an unmarried woman should give an authority to an agent, and afterwards marry, the authority would be revoked by the marriage (*n*).

—by mar-
riage of
female
principal;

The bankruptcy of the principal operates as a revocation of the authority of his agent touching any rights of property of which he is divested by the bankruptcy: the bankrupt is incapable of making a good title, and the act of his agent can have no greater validity (*o*). The bankruptcy of the

—by bank-
ruptcy;

Farmer v. Robinson, 2 Camp. 338; also *Warwick v. Slade*, 3 Camp. 127. In *Day v. Wells*, 30 Beav. 220; 7 Jur. N. S. 1004; Sir John Romilly, M.R., is reported to have expressed an opinion that a vendor cannot, after real estate has been knocked down at an auction, and before the signature of the written contract, revoke the authority of the auctioneer; and see Leake, 23; Dart, 182.

(*j*) *Chinnock v. Sainsbury*, 30 L. J. Ch. 409.

(*k*) Add. Con. 379.

(*l*) Dart, 186.

(*m*) Story, Ag. § 481.

(*n*) *Ibid.*

(*o*) *Ib.* § 482.

agent is not presumed to destroy the principal's confidence in him ; but it is said that it revokes his authority to receive money on account of his principal (*p*).

—by insanity ;

If a principal should become insane, that might operate as a suspension of the authority of his agent during the continuance of the insanity (*q*). The case of the insanity of the agent would seem to constitute a natural, nay, a necessary revocation of his authority ; for the principal cannot be presumed to intend that acts which would bind him should be done by one who is incompetent to transact, or even understand, the business upon which he is employed (*r*).

—by death ;

An agency is determined by the death of either the principal (*s*) or the agent (*t*).

Quantum meruit.

When an agent's authority is withdrawn, he is entitled to remuneration for the trouble, reimbursement of the expenses, and compensation for any loss, which he may have properly incurred in the execution of his office (*u*).

Renunciation of agency.

Similarly, when an agency is founded on valuable consideration, the agent who renounces it makes himself liable for the loss which his principal may sustain thereby (*v*).

Effect of auctioneer acting

If a person contracts, without authority, in the name of another, that other may either repudiate the contract (*w*),

(*p*) Story, Ag. § 486.

(*q*) *Ib.* § 481.

(*r*) *Ib.* § 487.

(*s*) No valid act can be done in the name of a dead man ; *Watson v. King*, 4 Camp. 272 ; cf. *Smout v. Ilbery*, 10 M. & W. 1 ; *Campanari v. Woodburn*, 15 C. B. 400 ; 24 L. J. C. P. 13.

(*t*) Story, Ag. §§ 488—498 ; cf. Russell, Merc. Ag. 254—7.

(*u*) Roscoe, 532 ; *Warlow v. Harrison*, 29 L. J. Q. B. 14, 16 ; cf. Dart, 187.

(*v*) Story, Ag. § 478.

(*w*) But owners of property should be careful how they leave their *indicia* of title in other hands ; *Williams v. Barton*, 3 Bing. 143 ; *Johnson v. Crédit Lyonnais Company*, 3 C. P. D. 32 ; 47 L. J. C. P. 241.

or, if he thinks fit, adopt and enforce it ; but he must adopt ^{without} it altogether : he cannot ratify what is beneficial to himself ^{authority} ; and reject the remainder (x).

A person contracting as agent for a named principal, ^{implied} without authority to do so, is liable upon an implied warranty ^{warranty} of authority ; but he cannot sue or be sued upon the con- ^{of autho-}tract, unless the alleged principal could not have authorized it (y). The damages for the breach of warranty will be those directly arising from it (z) ; but in the case of real estate, although the auctioneer who purports to sell, but has not sufficient authority, will be condemned to pay all the expenses to which the purchaser may have been put, and interest upon the purchase-money, if it has been unproductive (a), the purchaser cannot recover damages for his loss of a bargain (b). Where the supposed principal denies the authority, and an action is brought against him by the purchaser, which fails, the purchaser may recover the costs from the agent (c) ; but it would not be prudent to commence such an action without notice to the agent, and inquiring whether he still persisted that he had authority (d).

One who professes to contract as agent, but does not name any principal, may sue and be sued upon the contract, if he is in reality himself the principal (e).

(x) Sm. Merc. Law. 151.

(y) See Poll. Con. 434—439.

(z) *Simons v. Patchett*, 7 E. & B. 568 ; 26 L. J. Q. B. 195.

(a) *Bratt v. Ellis*, *Jones v. Dyke*, Sugd. 812, 813 ; *Gaby v. Driver*, 2 Y. & J. 549.

(b) Sugd. 44, 237 ; and see the judgment of Crompton, J., in *Collen v. Wright*, 7 E. & B. 314 ; 26 L. J. Q. B. 147. As to goods, see *Simons v. Patchett*, 7 E. & B. 568 ; 26 L. J. Q. B. 195.

(c) *Collen v. Wright*, 8 E. & B. 647 ; 27 L. J. Q. B. 215 ; 4 Jur. N. S. 357.

(d) Sugd. 44.

(e) Poll. Con. 439, 440.

Effect of
auctioneer
exceeding
his autho-
rity ;

When an agent has a written authority, parties dealing with him upon the faith of it are unaffected by private restrictions imposed upon him by his principal, of which they have no notice (*f*). When a general agent exceeds the authority with which he is actually clothed, his principal will be bound, if what the agent has done ordinarily falls within the limits of that kind of employment which he exercises (*g*), and if notice has not been given to the person with whom he deals that the principal has limited his authority (*h*).

Any loss consequent upon an agent exceeding his authority will fall upon the agent (*i*) ; though, if a benefit result, he must account for it to his employer (*j*).

—of fraud
by agent ;

The principal is even liable for the fraud of his agent, where it consists of that which, if not fraudulent, would have been within the scope of the agent's ordinary authority (*k*).

An agent's right to commission may be forfeited by his fraud (*l*).

—of want
of title in
principal.

In an action for the proceeds of a sale, brought against an auctioneer by his employer, the defendant is entitled to set up the right and authority of a third person (*m*).

(*f*) *Neeld v. Duke of Beaufort*, 5 Jur. 1123 ; aff. *sub nom. Beaufort (Duke) v. Neeld*, 12 C. & F. 248 ; 9 Jur. 813.

(*g*) *Edmunds v. Bushell*, L. R. 1 Q. B. 97 ; 35 L. J. Q. B. 20 ; *Howard v. Sheward*, L. R. 2 C. P. 148 ; 36 L. J. C. P. 42 ; 2 St. Com. 65.

(*h*) *Collen v. Gardner*, 21 Beav. 540 ; Dart, 183 ; Leake, 474.

(*i*) *Catlin v. Bell*, 4 Camp. 183. He will, however, be exonerated, if his departure from his instructions be ratified by his principal ; *Clarke v. Perrier*, Freem. Ch. 48 ; *Prince v. Clarke*, 1 B. & C. 186 ; Sm. Merc. Law, 109 ; Chit. Con. 196.

(*j*) See Sm. Merc. Law, 109, and the cases there cited.

(*k*) *Swire v. Francis*, 3 App. Cas. 106 ; 47 L. J. P. C. 18 ; *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317, 326 ; Dart, 181.

(*l*) See Chapter XII., *post*.

(*m*) *Biddle v. Bond*, 6 B. & S. 225 ; but not an adverse claim of which he knew when he sold for the plaintiff ; *Ex parte Davies*, 19 Ch. D. 86 ; cf. *Kingsman v. Kingsman*, 6 Q. B. D. 122.

When an act not apparently illegal is done by one person honestly and *bonâ fide* in compliance with the request of another, a promise to indemnify may be inferred (*n*).

If an auctioneer sells goods, having notice of want of title in his principal, he will be responsible in damages to the real owner (*o*) ; and, according to a recent decision, he will be liable even without such notice (*p*). It is, therefore, often more prudent for an auctioneer, before selling goods, to search the register of bills of sale. If after sale, but before payment, the real owner claims the money, the auctioneer cannot afterwards maintain an action against the buyer, although the latter has promised to pay on being allowed to take away the goods and has taken them away (*q*) ; and if, having received the deposit (*r*) or the price, he pays it over to his employer, after notice that the title of the latter was bad, he will be liable to the buyer for the money (*s*).

A person who undertakes for reward any duty, employment or trust is under an implied contract to act with all reasonable care, diligence and ability (*t*).

Negligence
or incompet-
ence of
auctioneer;

The obligation of an agent to adhere strictly to his special

(*n*) *Adamson v. Jarvis*, 4 Bing. 66 ; 12 Moore, 241 ; *Dugdale v. Lovering*, L. R. 10 C. P. 196 ; 44 L. J. C. P. 197.

(*o*) *Hardacre v. Stewart*, 5 Esp. 104 ; cf. *Buller v. Harrison*, 2 Cowp. 565.

(*p*) *Cochrane v. Rymill*, 40 L. T. N. S. 744 ; 27 W. R. 776 ; cf. *Foster v. Hollins*, L. R. 7 H. L. 757 ; *Taylor v. M'Keand*, 5 C. P. D. 358 ; 49 L. J. C. P. 563 ; *Walker v. Clay*, 49 L. J. C. P. 560 ; *Davis v. Artinghall*, 49 L. J. Ch. 609 ; 42 L. T. N. S. 507 ; W. N. 1880, p. 96. Whether the principal is disclosed appears to be immaterial in this connection ; see *Ganly v. Ledwidge*, L. R. 10 C. L. 33, 133.

(*q*) *Dickenson v. Naul*, 4 B. & Ad. 639. A sale by auction is not *per se* a sale in market overt ; *Lee v. Bayes* (or *Robinson*), 18 C. B. 599 ; not market overt. 25 L. J. C. P. 249 ; 2 Jur. N. S. 1093.

(*r*) *Burrough v. Skinner*, 5 Burr. 2639.

(*s*) *Peto v. Blades*, 5 Taunt. 657.

(*t*) *Chapman v. Walton*, 10 Bing. 57 ; 3 Moo. & S. 389 ; Story, Ag. §§ 182—191.

instructions (*u*) ceases, so soon as his obedience would involve a fraud upon third persons; for no contract can oblige a man to make himself an instrument of fraud (*v*).

When an agent not limited by instructions is prevented from pursuing the accustomed course of business (*w*), he should give notice of the fact to his principal (*x*).

An important part of an auctioneer's work is to take care that the purchaser enters, where necessary, into a binding contract under the Statute of Frauds (*y*).

If an auctioneer employed to sell an estate be guilty of such negligence, or use so little skill that the sale becomes nugatory, he is not entitled to recover any compensation for his trouble (*z*); if he negligently misdescribe the property, he will be liable to make good to the vendor the amount of compensation which the latter has had to pay to the purchaser in respect of such misdescription (*a*); and an agent may be liable in nominal damages for a breach of duty from which no actual loss has resulted to his employer (*b*).

A contract duly entered into by an agent is not avoided by his neglecting to communicate it to his principal (*c*).

(*u*) See Story, Ag. § 192; *Powell v. Sadler*, cited Paley, P. & A. 80; and *supra*, p. 24.

(*v*) *Bexwell v. Christie*, 1 Cowp. 395.

(*w*) See *supra*, p. 24; cf. *Guerreiro v. Peile*, 3 B. & Ald. 616; and *Brown v. Staton*, 2 Chit. 353, where an auctioneer who delivered goods without receiving the price was held liable on a declaration for not giving an accurate account of the full produce of the goods.

(*x*) *Smith v. Lascelles*, 2 T. R. 187; Sm. Merc. Law, 108.

(*y*) *Kavanagh v. Outhbert*, 1 B. & C. L. 136; *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52.

(*z*) *Denev v. Daverell*, 3 Camp. 451; see 2 Sm. L. C. 27; cf. *Jones v. Nanney*, M'Cle. 25; 13 Price, 76; also Chit. Con. 514; Sm. Con. 180.

(*a*) *Parker v. Farebrother*, 1 C. L. R. 323; and see Sm. Merc. Law, 108.

(*b*) *Hibbert v. Bayley*, 2 F. & F. 48.

(*c*) *Wright v. Bigg*, 15 Beav. 592; cf. *Heyman v. Neale*, 2 Camp. 38.

An agent is as much responsible for those whom he —or his
employs under him as for himself (*d*).
clerk.

The auctioneer's right to indemnity and remuneration
forms the subject of a separate chapter (*e*).

(*d*) *Lord North's Case*, 2 Dy. 161A.

(*e*) Chapter XII., *post*.

CHAPTER III.

APPRAISEMENTS AND VALUATIONS.

Auctioneers frequently act as appraisers.

AUCTIONEERS are frequently called upon to act as appraisers, not only as a preliminary step to their auction-sales, but also in cases where they are not employed to sell by auction. It is, therefore, the duty, as it will always be to the advantage, of every auctioneer to make himself well acquainted with the theory and practice of surveying, valuing and appraising the different kinds of real and personal property (*a*).

As to appraiser's licence.

A person acting as an appraiser (*b*) without a licence incurs a penalty of £50 (*c*). But a licence to act as an auctioneer is a licence to act as an appraiser also (*d*). The

(*a*) It would be out of place in a work like the present to attempt to give full instructions for the efficient performance of this part of an auctioneer's duty, especially as nothing but a long course of observation and experience can make a good appraiser. But, with a view to rendering the book as generally useful as possible, brief rules and tables for estimating the value of the descriptions of property most commonly submitted to the hammer are inserted in the appendix. See *post*, pp. 441 *et seq.* For simple directions as to the use of logarithms the reader is referred to Rouse's Practical Man.

(*b*) That is, as a person bearing the known character of an appraiser; *Atkinson v. Fell*, 5 M. & S. 240.

(*c*) An appraiser's licence is an annual one and is subject to a duty of £2. See 46 Geo. III. c. 43, ss. 4—6; and 8 & 9 Vict. c. 76, s. 1, Appendix, *post*, pp. 390, 391.

(*d*) Cf. *ante*, p. 14. By 24 & 25 Vict. c. 21, ss. 11, 13, a licensed house agent may act as appraiser, and *vice versâ*, without additional licence.

7th section of 46 Geo. III. c. 43, enacts that "all persons who shall be duly licensed according to law to act as auctioneers shall and may act as appraisers without taking out any other licence" (e); and 8 & 9 Vict. c. 76, s. 1, by which the present duty is imposed on persons exercising the calling or occupation of an appraiser, expressly exempts licensed auctioneers from the duty (f).

It is a good defence to an appraiser's claim for work and labour that he was not duly licensed (g).

The Stamp Act, 1870, requires every appraiser, under a penalty of £50, to write out every appraisement or valuation which he makes, upon duly stamped material, within fourteen days after making it; and any one taking from an appraiser an appraisement not written out and stamped in accordance with the act incurs a forfeiture of £20 (h). But it is important to observe that appraisements and valuations are exempted from the necessity of a stamp, and, consequently, of a formal document, in the following cases, viz :—

(1.) When made for the information of one party only,

(e) See *post*, p. 391.

(f) *Ibid*.

(g) *Palk v. Force*, 12 Q. B. 666; 17 L. J. Q. B. 299; 12 Jur. 797; decided on demurrer; cf. *Leake*, 744. As to auctioneer, see *ante*, p. 9.

(h) 33 & 34 Vict. c. 97, s. 38. For the text of this section, and the scale of duties imposed by the act, s. 3 and schedule, *sub tit*. "Appraisement," see Appendix, pp. 406, 423, *post*.

A broker called to prove the value of goods need not produce an inventory written on an appraisement stamp; *Stafford v. Clark*, 1 C. & P. 24, 25.

An award stamp is not necessary, unless there be a submission of differences to the appraiser; and, therefore, where there was a reference to appraisers as to the value of goods, and nothing more, an appraisement stamp upon the written valuation was held to be sufficient, without an award stamp; *Leeds v. Burrows*, 12 East, 1; cf. *Perkins v. Potts*, 2 Chit. 399.

and not in any manner obligatory between parties (i);

(2.) When made by order of a court of admiralty;

(3.) When made for the purpose of ascertaining the amount of legacy or succession duty payable upon property (j).

It is evident that an appraisement made for the mere purpose of preparing particulars and conditions of sale will fall within the first of the above exemptions (k).

Appraise-
ment some-
times
required
by law.

There are some descriptions of property, such as goods distrained for rent (l), and estates and effects seized under extents (m), which it is not lawful to sell without a previous appraisement (n); but even where no such legal obligation

(i) This exemption was not expressly contained in any of the former acts granting duties on appraisements; but, nevertheless, it was held, before the passing of 33 & 34 Vict. c. 97, that a valuation made for the information of parties and not intended to be binding on them was not liable to an appraisement stamp, though an agreement was afterwards founded on its data; *Jackson v. Stopherd*, 2 C. & M. 361; 4 Tyrw. 330; cf. *Atkinson v. Fell*, 5 M. & S. 240.

(j) 33 & 34 Vict. c. 97, s. 3 and schedule, *sub tit.* "Appraisement"; see Appendix, *post*, p. 423. The 34 & 35 Vict. c. 103, s. 26, exempts from stamp duty "an appraisement or valuation of property of a deceased person, made for the information of an executor or other person required to record in any commissary court in Scotland an inventory of the estate of such deceased person."

(k) A stamp is necessary upon a valuation required by the Tithe Commutation, Copyhold or Inclosure Acts; see 31 & 32 Vict. c. 89, s. 2.

(l) See *post*, p. 279.

(m) A writ of extent is issued for the purpose of enforcing execution on behalf of the Crown; see Broom, C. L. 204; 3 St. Com. 669. For form of such writ, see West on Extents, 55.

Trustees
for sale.

(n) Trustees for sale should always ascertain the value of the property which they are empowered to sell; and they will be justified in going to the expense of a valuation, where circumstances seem to render such a course expedient; Sugd. 60; Lewin, 389; Dart, 79. So also with trustees for purchase, and receivers of the property of liquidating debtors; Lewin, 452; *Ex parte Gordon*, L. R. 20 Eq. 291.

exists, the auctioneer will always find a personal inspection and valuation a satisfactory step to take, preparatory to the holding of an auction. Without, at least, a general knowledge of the value of the property to be disposed of, he will find it impossible to do justice to his employer. He will find a preliminary valuation more particularly useful, when, as frequently happens, it devolves upon him to fix the reserved price, below which the property is not to be sold.

It is not unusual, on sales by auction of real estate, to require the purchaser to take fixtures, timber, stock and other articles at a valuation, in addition to the price at which a lot is knocked down. This is commonly made the subject of a special condition of sale, providing for the manner in which the valuation shall be made (*o*). But as such conditions tend to discourage biddings, owing to the uncertainty of the amount which may have to be paid, and as disputes frequently arise in carrying them into effect (*p*), it is better, if possible, to have the valuation made before the sale, in which case a fixed sum can be inserted in the conditions as the price at which the supplementary article is to be taken.

Separate valuations of fixtures, &c. upon sales of real estate.

It is a question how far an unskilful and incorrect appraiser is entitled to recover his fees and expenses. If a person undertakes to perform a work of skill and labour, and fails therein, so that his employer derives no benefit from his work, he is not entitled to recover anything for his trouble (*q*). If a surveyor delivers an estimate greatly below the sum at which work can be done, and thereby induces a private person to undertake what he otherwise would not undertake, he cannot recover; but it is not a

General obligations of appraiser.

(*o*) See *post*, p. 93.

(*p*) See 1 Chit. Prac. 829, 830; Dart, 221, 222; Leake, 639, 705, 958, 1135.

(*q*) *Duncan v. Blundell*, 3 Stark. 6.

trifling deviation from an estimate that will prevent a party from recovering (*r*). A man should not estimate a work at a price at which he would not contract for it (*s*).

Like every other paid agent, an appraiser must use due care and diligence in the performance of his duty (*t*); and he must not be content to go upon the information of others, even though referred to them by his employer (*u*).

Amount of
his remun-
eration ;

As regards the amount of remuneration for making a valuation properly, it is, perhaps, in every case a question for the jury whether the charge made is a reasonable one for the service rendered (*v*). Where a surveyor, who had measured building work and settled the tradesmen's bills, claimed 5 per cent. upon the sums allowed to the tradesmen, and evidence was offered that it was the uniform practice of surveyors to charge that rate of commission, Lord Kenyon, C.J., is reported to have said that the plaintiff was entitled to reasonable compensation for his trouble, but was not to estimate it by the money laid out by the defendant in finishing his building (*x*). But in a later case Lord Ellenborough, C.J., left it to the jury to say whether a commission of 5 per cent. upon the amount expended was a reasonable sum to be charged by a surveyor for superintending alterations in buildings, there being evidence that that mode of charging was customary (*y*).

(*r*) *Money Penny v. Hartland*, 2 C. & P. 378, 381.

(*s*) *Ibid.* By an old statute of 11 Edw. I., the Statute of Acton Burnel, appraisers valuing extended goods too highly were compelled to take them at their own valuation. But this interesting specimen of the *lex talionis* has recently disappeared from the statute book : Stat. Law Rev. Act, 1863.

(*t*) *Money Penny v. Hartland*, 1 C. & P. 352; *Turner v. Goulden*, L. R. 9 C. P. 57.

(*u*) *Money Penny v. Hartland*, 2 C. & P. 378.

(*v*) Cf. Ch. XII., *post*.

(*x*) *Updell v. Stewart*, Peake, N. P. C. 193.

(*y*) *Chapman v. De Tastet*, 2 Stark. 294. In *Money Penny v. Hartland*, 2 C. & P. 378, Best, C.J., appears to have thought that a surveyor

Appraisers appointed by the high bailiff of a County for appraisal under Court, to value goods, under 9 & 10 Vict. c. 95, s. 106, are entitled, out of the produce, to sixpence in the pound on the county court process value of the goods, over and above the stamp duty (z).

might fairly charge five guineas a day for attending in the House of Commons during the progress of a bill.

(z) See *post*, pp. 250, 251. As to charges on an appraisal under a distress, see *post*, p. 281.

CHAPTER IV.

PARTICULARS AND CATALOGUES.

Definition of particulars and catalogues. ON all sales by auction, except where the property is of trifling value, a description of the thing to be sold is reduced into writing ; and such description, when it relates to real property, or property of the nature of realty, is called the "Particulars of Sale," and when it refers to personal effects sold in lots, is designated a "Catalogue" (a).

In doubtful cases particulars are construed against vendor. In preparing particulars great care should be taken to use appropriate terms. The language employed should be clear and unambiguous ; because, if there be any reasonable doubt as to the meaning of the particulars, they will be construed strictly against the vendor (b).

Not affected by verbal declaration. Moreover, as a general rule, they cannot be contradicted, varied, or added to, by any verbal declarations of the auctioneer made at the time of sale. As was said by Lord

Advertisements. (a) Advertisements are generally published in the newspapers, announcing the time and place of sale, and subject of sale, and stating to whom to apply for further information. They generally give, either the particulars in full, or an epitome of them. See specimens, *post*, pp. 292, 293. Particulars and conditions should be circulated before the sale, or at any rate in the sale-room ; *Torrance v. Bolton*, L. R. 14 Eq. 124, 132 ; 41 L. J. Ch. 643, 647 ; aff. L. R. 8 Ch. 118 ; 42 L. J. Ch. 177.

Circulation of particulars. (b) *Dart*, 109 ; *Symons v. James*, 1 Y. & C. C. C. 487 ; *Rhodes v. Ibbetson*, 4 De G. M. & G. 787 ; 23 L. J. Ch. 459 ; *Cruse v. Nowell*, 2 Jur. N. S. 536 ; 25 L. J. Ch. 709 ; *Smith v. Ellis*, 14 Jur. 682. In these cases the ambiguity appeared on the conditions ; but the principles on which they were decided are equally applicable to particulars.

Ellenborough, C.J., in a case before him : " Men cannot tell ^{tions of} what contracts they enter into, if the written conditions of ^{auctioneer.} sale are to be controlled by the babble of the auction-room " (c). The reason of the rule is that evidence cannot be given of a parol variation of a written contract.

But, although evidence of such verbal declarations is ^{Exceptions.} inadmissible at law on behalf of either plaintiff or defendant, and in Equity on behalf of the plaintiff, such evidence is admissible in Equity on behalf of the defendant to an action for specific performance (d). The ground ^{Fraud, &c.} on which this exception to the general rule proceeds may be stated in the words of Lord Langdale, M.R. : " Where fraud, mistake or surprise cannot be established without evidence, Equity will allow a defendant to a bill for specific performance to support a defence founded upon any of those grounds by evidence *dehors* the agreement " (e).

Where an auctioneer has, at the sale, made a parol declaration at variance with the particulars, the practical application of the rule would appear to be as follows. If the variation is in favour of the vendor, the vendor cannot enforce specific performance with the variation, nor, on the other hand, can the purchaser enforce specific performance

(c) *Jones v. Edney*, 3 Camp. 285, 287 ; where the reading the lease at the sale was held no excuse for misstating the terms of the lease in the particulars ; approved in *Flight v. Booth*, 1 Bing. N. C. 370, 379 ; 3 L. J. C. P. 66.

(d) *Dart*, 110 ; *Gunnis v. Erhart*, 1 H. Bl. 290 ; *Greaves v. Ashlin*, 3 Camp. 425 ; *Hogg v. Snaith*, 1 Taunt. 347 ; *Powell v. Edmunds*, 12 East, 6 ; *Ford v. Yates*, 2 Man. & G. 549 ; *Higginson v. Clowes*, 15 Ves. 516 ; *Clowes v. Higginson*, 1 V. & B. 524 ; and the same applies between an original purchaser and his sub-purchaser ; *Shelton v. Livius*, 2 C. & J. 411 ; 1 L. J. Ex. 139. The operation of a written agreement may, however, be suspended by a contemporaneous oral agreement ; *Wallis v. Little*, 11 C. B. N. S. 369 ; 31 L. J. C. P. 100 ; and see *post*, Chap. VIII.

(e) *Manser v. Back*, 6 Hare, 443, 448.

without the variation. If the variation is in favour of the purchaser, the purchaser cannot enforce specific performance with the variation, nor, on the other hand, can the vendor enforce specific performance without the variation (*f*).

Parol evidence admissible to explain subject-matter of written agreement.

Parol evidence is admissible to explain the subject-matter of a written agreement, although not to vary its terms (*g*). And, in a recent case, it has been decided that a plaintiff purchaser may give evidence of parol declarations made by the auctioneer at the sale, when such declarations do not contradict the particulars or conditions, but are merely collateral to the contract (*h*).

Same rules applicable to catalogues.

And the same rules apply to catalogues, whenever the contract has been reduced into writing. But, as a contract for the sale of goods need not, in certain cases, be in writing (*i*), it may happen that the contract is by parol. In such a case verbal declarations made by the auctioneer

(*f*) *Woollam v. Hearn*, 7 Ves. 211; 2 W. & T. L. C. 464; and the following cases, among others, there cited: *Higginson v. Clowes*, 13 Ves. 516; *Winch v. Winchester*, 1 V. & B. 375; *Marquis Townshend v. Stangroom*, 6 Ves. 328; *Price v. Ley*, 4 Giff. 235; aff. 32 L. J. Ch. 530; *Ramsbottom v. Gosdon*, 1 V. & B. 165; *London & Birmingham Ry. Co. v. Winter*, 1 Cr. & Ph. 57; *Wood v. Scarth*, 2 Kay & J. 33; *Martin v. Pycroft*, 2 De G. M. & G. 785; 22 L. J. Ch. 94, where plaintiff submitted to variation being made in favour of defendant; *Clowes v. Higginson*, 1 V. & B. 524, where plaintiff was refused specific performance with the variation, because he had throughout insisted on his construction of the contract; *Manser v. Back*, 6 Hare, 443, where defendant (the vendor) was permitted to give evidence of a parol variation, although the plaintiff (the purchaser) did not hear the auctioneer make it; *Snelling v. Thomas*, L. R. 17 Eq. 303; 43 L. J. Ch. 506. As to effect of part performance, see *post*, Chap. X.

(*g*) *Ogilvie v. Foljambe*, 3 Mer. 53; *Macdonald v. Longbottom*, 1 E. & E. 987; 29 L. J. Q. B. 256; and see *Pember v. Mathers*, 1 Bro. Ch. 52; cf. *Leake 196 et seq.*; and see *post*, Chap. VIII.

(*h*) *Brett v. Clowser*, 5 C. P. D. 376; cf. *Leake*, 188.

(*i*) As to what contracts must, and what need not, be in writing, see *post*, Chap. VIII.

would be admissible in evidence on behalf of either party (*k*).

The particulars are generally printed together with the conditions on which the sale is to be made (if not printed together they should be made explicitly to refer to one another) (*l*), and the two together become part of the contract of sale ; it being customary, on the close of the biddings, for the purchaser merely to agree, by a short memorandum (*m*), which is usually annexed to, or endorsed on, the particulars and conditions, to purchase the property as described in the particulars, subject to the conditions.

Particulars and conditions form terms of contract.

The distinction between particulars and conditions has been stated as follows by Malins, V.-C., in *Torrance v. Bolton* (*n*) : "The proper office of the particulars is to describe the subject-matter of the contract, that of the conditions to state the terms on which it is sold." This distinction has not always been observed ; but should be carefully borne in mind, for, as was held in the above-mentioned case, the omission from the particulars of a fact which ought to be stated in them is not necessarily remedied by a statement of it, however explicit, in the conditions ; unless, indeed, it can be shown that the purchaser's attention was expressly directed to it.

Distinction between particulars and conditions.

Speaking generally, the particulars should contain a faithful description of the property to be sold, with an exact account of its liabilities and incumbrances, and "should be so framed as to convey clear information to the ordinary class

Particulars should contain faithful description of property.

(*k*) *Eden v. Blake*, 13 M. & W. 614 ; 14 L. J. Ex. 194.

(*l*) *Kenworthy v. Schafeld*, 2 B. & C. 945 ; and *post*, Chap. VIII., *passim*.

(*m*) For forms of memorandum, see *post*, Part. II.

(*n*) L. R. 14 Eq. 124, 130 ; 41 L. J. Ch. 643 ; aff. L. R. 8 Ch. 118 ; 42 L. J. Ch. 177.

of persons who frequent sales by auction" (*o*). When the property has passed by deed or writing, the description of it should correspond in effect with the parcels in the written document; but it is not necessary, or desirable, to adopt the formal language used in the deeds.

In most cases draft particulars should be submitted to the solicitor.

If there be the least doubt about the title or identity of the estate, or if the estate be one of any considerable magnitude, proper legal advice should be resorted to before the particulars are issued. In fact, in all but the simplest cases, it would be advisable to submit the draft particulars to the solicitor, unless he has given information as to all the points that should be mentioned; and where no solicitor is employed, the auctioneer should submit them to his principal (*p*).

Matters to be noticed in particulars.

1. If sale without reserve.

In drawing particulars the following matters ought to be noticed (*q*) :—

- (1.) If the subject of the sale is land, *i.e.*, "any interest in any messuages, lands, tenements or hereditaments of whatever tenure," the particulars, or the conditions (*r*), should state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved (*s*). If such a statement should not be made, the sale would probably be treated as without reserve (*t*).

(*o*) *Dykes v. Blake*, 4 Bing. N. C. 463, 476; 7 L. J. C. P. 282; approved in *Gibson v. D'Este*, 2 Y. & C. C. C. 542; 8 Jur. 94, 98; rev. *sub nom. Wilde v. Gibson*, 1 H. L. C. 605; 12 Jur. 527. It may be taken that the courts will, in general, construe the language used in the sense in which it would be understood by such persons; *Waring v. Hoggart*, Ry. & M. 39.

(*p*) An auctioneer who is guilty of negligence in drawing particulars may forfeit his right to payment for his services; see *ante*, p. 36.

(*q*) For fuller information on some of these points, see *post*, pp. 60 *et seq.*

(*r*) Generally the conditions; see *post*, p. 90.

(*s*) 30 & 31 Vict. c. 48, s. 5.

(*t*) Dart, 113; cf. *post*, Chap. VII.

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| (2.) The character of the property, whether a house or land, or both ; its quantity and situation and, sometimes, its boundaries. | 2. Kind of property. |
| (3.) The tenure. | 3. Tenure. |
| (4.) The nature of the tenancy, if the property is let, as to period, unusual covenants, &c. | 4. Nature of tenancy. |
| (5.) The annual income, if any, from rental, or a fair estimate thereof. | 5. Income. |
| (6.) The rights or claims of other parties, subject to which the property is to be sold ; <i>e.g.</i> , mortgages, easements, such as rights of way, incidental rights of common, fishery, &c. | 6. Rights of other parties. |
| (7.) Unusual outgoings, if any. | 7. Outgoings. |
| (8.) The time and place of sale, and by whom the sale is to be conducted (<i>u</i>). | 8. Time &c. of sale. |
| (9.) It is often thought desirable to add "unless previously disposed of by private contract." Although an auctioneer is not liable to pay damages to an intending purchaser, if property advertised is not put up (<i>v</i>), in fairness, some notice should be given, if any lot is likely to be withdrawn. | 9. "Unless disposed of by private contract." |

(*u*) Although the auctioneer need not name his principal (but see *post*, Chap. VI.), sometimes the name is mentioned on the particulars. If the principal is described as selling in any particular capacity, care should be taken that such capacity be accurately described ; *Webb v. Kirby*, 7 De G. M. & G. 376 ; 26 L. J. Ch. 145. When the goods of another person have been sent in to be sold together with the principal lot, it seems that the auctioneer ought to state the fact, if his principal's name appears on the particulars or catalogue ; *Bexwell v. Christie*, 1 Cowp. 395 ; cf. *Coppin v. Craig*, 7 Taunt. 243. If the name or a description of the principal does not appear on the particulars or conditions, it should be stated in the agreement or memorandum ; see *post*, Chap. VIII. p. 150.

(*v*) *Harris v. Nickerson*, L. R. 8 Q. B. 286 ; 42 L. J. Q. B. 171 ; 21 W. R. 636 ; 28 L. T. N. S. 410. As to the effect of a wilfully false misrepresentation in this connection, see *Richardson v. Silvester*, L. R. 9 Q. B. 34 ; 43 L. J. Q. B. 1 ; and *post*, p. 116, note.

10. To whom to apply for view &c.

(10.) The parties to whom application is to be made for particulars and conditions and for a view of the property.

11. Plan.

(11.) When the property consists of, or includes, land, it will often be found convenient to append to the particulars a plan with the dimensions properly marked and all rights of way &c. known to exist clearly shown. Great care must be taken that the plan, if referred to in the particulars, is accurate, and, if a scale of measurements be marked on it, that the measurements are correct. (See *infra*, pp. 80 *et seq.*)

Effect of mis-statement or misdescription.

In drawing particulars, the use of flowery descriptions and ambiguous expressions is to be avoided (*w*) ; fairness and accuracy are to be observed, and nothing left to inference (*x*) ; “for it is the duty of every person truly and honestly to represent that which he has to sell” (*y*), and the effect of a material misstatement or misdescription is, either to invalidate the sale, or to entitle the purchaser to compensation.

Wilful and designed.

If the misdescription be wilful and designed, it amounts to fraud ; and fraud, upon general principles of law, renders a contract voidable (*z*).

(*w*) *Taylor v. Martindale*, 1 Y. & C. C. C. 658.

(*x*) *Swaissand v. Dearsley*, 29 Beav. 430, 436 ; 30 L. J. Ch. 652 ; *Coverly v. Burrell*, 5 B. & Ald. 257 ; *Tomkins v. White*, 3 Smith, 435 ; *Clowes v. Higginson*, 1 V. & B. 524.

(*y*) *Per* Abbott, C.J., in *Waring v. Hoggart*, Ry. & M. 39, 40 ; and see Lord Ellenborough's remarks in *Tomkins v. White*, 3 Smith, 435, 439, to the effect that a little more fairness on the part of auctioneers in framing their particulars would avoid many inconveniences.

(*z*) *Flight v. Booth*, 1 Bing. N. C. 370 ; 3 L. J. C. P. 66 ; *Duke of Norfolk v. Worthy*, 1 Camp. 337 ; *Schneider v. Heath*, 3 Camp. 506 ; *Mostyn v. West Mostyn Coal & Iron Co.*, 1 C. P. D. 145 ; 45 L. J. Q. B. 401 ; *post*, Chap. X.

And where there is a gross misdescription, accompanied by gross negligence on the part of the vendor, it seems that fraud may be inferred; for, when the seller has the means of knowledge, a duty is imposed on him to use due diligence (a). Gross misdescription, accompanied by gross negligence.

And even where there is no proof of fraud, wilful or constructive, if there be a misdescription or suppression of importance, of such a character as not to be a fair subject for compensation, the contract cannot be enforced, even though there be the usual condition that errors and misdescriptions shall not annul the sale (b). And a misrepresentation in a slight degree may prevent the vendor from obtaining specific performance, although not such as would entitle the pur- Material misdescription, whether ground for avoiding contract or for compensation.

(a) Sugd. 31, commenting on *Wright v. Wilson*, 6 C. & P. 734, n.; 1 Moo. & R. 207; *Attwood v. Small*, 6 Cl. & Fin. 232, 395; *Denny v. Hancock*, L. R. 6 Ch. 1; *Hart v. Swaine*, 7 Ch. D. 42; 47 L. J. Ch. 5. The onus of proof lies on the purchaser, the presumption of law being against fraud; see *Jones v. Clifford*, 3 Ch. D. 779, 793; 45 L. J. Ch. 809, 815; 24 W. R. 979.

(b) *Wall v. Stubbs*, 1 Madd. 80; *Price v. Macaulay*, 2 De G. M. & G. 339; *Dobell v. Hutchinson*, 3 A. & E. 355; 5 N. & M. 251; 1 H. & W. 394; *Coverley v. Burrell*, 5 B. & Ald. 257; *Stevens v. Adamson*, 2 Stark. 422; *Ballard v. Way*, 1 M. & W. 520; *Robinson v. Musgrove*, 8 C. & P. 469; 2 Moo. & R. 92, where Tindal, C.J., said that, if property was sold at auction under a description which was untrue and calculated to entrap persons coming into the auction-room, the sale was void; *Lord Brooke v. Rounthwaite*, 5 Hare, 298; 15 L. J. Ch. 332; 10 Jur. 656; *Tomkins v. White*, 3 Smith, 439; *Granger v. Worms*, 4 Camp. 83; *Waring v. Hoggart*, Ry. & M. 39; *Denny v. Hancock*, L. R. 6 Ch. 1; *Jones v. Clifford*, 3 Ch. D. 779; 45 L. J. Ch. 809; *Jones v. Rimmer*, 14 Ch. D. 588; 49 L. J. Ch. 775; *Turner v. Turner*, W. N. 1881, 70; *Kinnaird v. Smith*, W. N. 1881, 82. In *Wright v. Wilson*, 1 Moo. & R. 207, 6 C. & P. 734, n., Parke, J., ruled that, where misdescription originated in error only, the purchaser was bound; and in *Mills v. Oddy*, 6 C. & P. 728, he appears to have been of the same opinion. These were, however, decisions at *nisi prius*, and the current of authority is the other way; see Sugd. 31. Nor is it an answer to say that the purchaser might have found out the misrepresentation; *Cox v. Middleton*, 2 Drew. 209; 23 L. J. Ch. 618; *In re Arnold*, 14 Ch. D. 270, 281. As to the effect of such a clause in the conditions as alluded to in the text, see *post*, p. 106.

*Flight v.
Booth.*

chaser to rescind the contract and to have the conveyance executed in pursuance of it cancelled (c). There is great difficulty in laying down any certain and definite rule to determine what amount of misstatement or misdescription in the particulars will justify a rescission of the contract, and what will be ground for compensation only. Tindal, C.J., in *Flight v. Booth* (d), states the following broad principle: "Where the misdescription, although not proceeding from fraud, is in a material and substantial point, so far affecting the subject-matter of the contract that it may reasonably be supposed that but for such misdescription the purchaser might never have entered into the contract at all, in such case the contract is avoided altogether, and the purchaser is not bound to resort to the clause for compensation." And in a subsequent case it was laid down that, if the misrepresentation be one that can be made good, the vendor may obtain specific performance on making it good; but, if it cannot be made good, or if the vendor

(c) *Cadman v. Horner*, 18 Ves. 10; *Clermont v. Tasburgh*, 1 Jac. & W. 112; cf. *Savage v. Brocksope*, 18 Ves. 335; *Mortlock v. Buller*, 10 Ves. 292. There is considerable doubt as to whether, in the absence of fraud, a purchaser is entitled to compensation for a misrepresentation after conveyance executed. Jessel, M. R., in *re Turner & Skelton*, 13 Ch. D. 130; 49 L. J. Ch. 114, held that he was; and see observations by Hall, V.-C., in *Jones v. Clifford*, 3 Ch. D. 779, 792; 45 L. J. Ch. 809; 24 W. R. 979; but Malins, V.-C., in *Manson v. Thacker*, 7 Ch. D. 620; 47 L. J. Ch. 312; and in *Allen v. Richardson*, 13 Ch. D. 524; 49 L. J. Ch. 137; followed by Denman, J., in *Brett v. Clowser*, 5 C. P. D. 376; held that he was not.

(d) 1 Bing. N. C. 370, 377; and see also the remarks of Plumer, M. R., in *Knatchbull v. Grueber*, 1 Madd. 153, 167. In *Leach v. Mullett*, 3 C. & P. 115, 117, Best, C.J., observed that "auctioneers ought to be narrowly watched, lest, under the idea of mistake, they may cover material matters." As to the effect of omitting from the particulars mention of a fact which ought to have been stated, see *Torrance v. Bolton*, L. R. 14 Eq. 124; 41 L. J. Ch. 643; aff. L. R. 8 Ch. 118; 42 L. J. Ch. 177; and *ante*, p. 47.

refuses to make it good, the purchaser who is deceived may rescind the contract, if the misrepresentation was material, and he was misled thereby. The misrepresentation may consist as much in the suppression of what is true as in the assertion of what is false, but it must be a representation giving occasion to the contract (e).

Ambiguity in the particulars may in some cases be fatal to the contract. "If it appears upon the evidence that there was in the description of the property a matter on which a person might *bond fide* make a mistake, and he swears positively that he did make a mistake, and his evidence is not disproved, this Court cannot enforce specific performance" (f). Where an estate was sold in lots, and the particulars stated that the timber on two of the lots was to be taken at a valuation, and one of the conditions specified generally that the timber was to be taken at a valuation, Sir William Grant, M.R., said that, supposing that the condition applied to all the lots, the express statement in the particulars as to two of them was so likely to mislead the purchaser as to the meaning of the condition that it would be inequitable to enforce specific performance of the contract (g).

Specific performance has been refused against a vendor, where, by a mistake on the part of the auctioneer, the particulars on which the agreement was endorsed included property which the vendor never intended to be sold (h);

(e) See judgment of Romilly, M.R., in *Pulsford v. Richards*, 17 Beav. 87, 95, 96; *Blenkhorn v. Penrose*, 29 W. R. 236.

(f) *Per* Romilly, M.R., in *Swaisland v. Dearsley*, 29 Beav. 430, 433; 30 L. J. Ch. 652; approved *per* Baggallay, L.J., in *Tamplin v. James*, 15 Ch. D. 215, 218; see also *Taylor v. Martindale*, 1 Y. & C. C. C. 658; *Maner v. Back*, 6 Hare, 443.

(g) *Higginson v. Clowes*, 15 Ves. 516; cf. *Jones v. Rimmer*, 14 Ch. D. 588; 49 L. J. Ch. 775.

(h) *Maner v. Back*, 6 Hare, 443. In this case an alteration had been

on ground
of mistake.

but the mistake must be with reference to a matter which, if there were no mistake, would not be a proper subject for compensation (i); and the vendor will be liable to make good any expense which his mistake may have occasioned the purchaser (k). The Court will even rectify the conveyance, if the parties can be put in the same position as before the conveyance was executed (l).

Parol evidence admissible to rebut allegation of mistake.

But if a purchaser seeks to avoid the contract, or claims compensation, on the ground of mistake, it is competent to the vendor to adduce parol evidence to show that the purchaser had been personally informed of the misdescription in the particulars, or had had the ambiguity explained to him; for, if he have bought with full information, he will be held to his bargain (m). Thus, it may be proved that the purchaser,

made in the particulars, but the altered copies were first produced in the sale-room. They were read by the auctioneer, but it did not appear that the purchaser knew of the alteration. Subsequently the auctioneer signed the agreement inadvertently on one of the original particulars. Cf. *Day v. Wells*, 30 Beav. 220; 7 Jur. N. S. 1004, where specific performance was refused against the vendor on the ground that there had been some misunderstanding and mistake between him and the auctioneer as to the reserved price. In *Webster v. Cecil*, 30 Beav. 62, where the vendor offered to sell an estate for £1,100, which figure he had reached by a wrong addition, instead of £2,100, specific performance was refused to the purchaser. But where, on the sale of an estate by order of the Court, the purchaser of one of the lots agreed to take the timber at the price named by the auctioneer, and from that price by mistake was omitted the value of the timber on a portion of the lot, it was held that the purchaser was entitled to hold the property without submitting to a valuation of the timber; *Griffiths v. Jones*, L. R. 15 Eq. 279; 42 L. J. Ch. 468.

(i) *M'Kenzie v. Heskeith*, 7 Ch. D. 675, 680; 47 L. J. Ch. 231.

(k) *Calverley v. Williams*, 1 Ves. 209; *White v. Cuddon*, 8 Cl. & Fin. 766; cf. Dart, 742 *et seq.* *Semble*, a mistake in the particulars, not arising from the neglect of the vendor, may entitle him to compensation from the purchaser; see *Leslie v. Thompson*, 9 Hare, 268; 20 L. J. Ch. 561; 15 Jur. 717; Dart, 645 *et seq.*

(l) *Harris v. Pepperell*, L. R. 5 Eq. 1.

(m) *Farebrother v. Gibson*, 1 De G. & J. 602; *Gunnis v. Erhart*, 1 H.

before the sale, perused the lease referred to in the particulars, and that such lease explained the ambiguity (n). And, in the absence of fraud, it may be shown that the purchaser tested the accuracy of the particulars, as by inspecting the property, and did not rely upon the representation made to him (o); unless the misrepresentation be of such a nature as not to be apparent on a personal inspection (p). "If there appear on the particulars no ground for the mistake, if no man with his senses about him could have misapprehended the character of the parcels, then I do not think it is sufficient for the purchaser to swear that he made a mistake, or that he did not understand what he was about" (q). Where property correctly described on the particulars and plan was bought by the purchaser, who was well acquainted with the property and did not look at the plan, under the impression that certain other premises, which had hitherto been occupied along with it, were also included, specific performance was decreed against him (r).

Purchaser cannot rescind merely because he has made a mistake, where there is no ambiguity.

If it should be discovered that there is any omission, Errors should be

Bl. 290; *Pember v. Mathers*, 1 Br. Ch. 52; *Ogilvie v. Foljambe*, 3 Mer. 53; *Goddard v. Jeffreys*, W. N. 1881, 160.

(n) *Bradshaw v. Bennett*, 5 C. & P. 48. But if the lease contradicts the particulars, and the terms of the lease are more favourable to the purchaser, the vendor is bound by the description in the lease; *Dart*, 120; *Bentley v. Craven*, 17 Beav. 204.

(o) *Attwood v. Small*, 6 Cl. & Fin. 232, 338; *Clapham v. Skillico*, 7 Beav. 146; *Jennings v. Broughton*, 17 Beav. 234; 5 De G. M. & G. 126; *Dyer v. Hargrave*, 10 Ves. 505; *Redgrave v. Hurd*, 20 Ch. D. 1.

(p) *Denny v. Hancock*, L. R. 6 Ch. 1.

(q) *Per Romilly, M.R.*, in *Swaissland v. Dearsley*, 29 Beav. 430, 433; 30 L. J. Ch. 652; approved *per Baggallay, L.J.*, in *Tamplin v. James*, 15 Ch. D. 215, 218. But specific performance was refused in *Malins v. Freeman*, 2 Keen, 25, where a person employed to bid for another, by mistake, purchased one of two lots that were offered for sale, thinking that he was bidding for the other. In such a case the Court would now probably compel the purchaser to pay damages to the vendor; see the observations of the L.JJ. in *Tamplin v. James*, *ubi supra*.

(r) *Tamplin v. James*, *ubi supra*.

rectified before sale. misdescription or ambiguity in the particulars, they should be carefully amended, and pains taken that only corrected copies are distributed (s). If time does not admit of this being done, notice of the error should be distinctly given to the bidders, and the ambiguity clearly explained, and the auctioneer should not merely read out the altered particulars (t). The purchaser's attention ought to be called to the alteration, which should be embodied in the memorandum, before it is signed (u).

Unimportant variations not fatal. Trifling and unimportant variations in the description of an estate are not fatal to the contract, if the transaction be fair, especially if there be the usual condition providing that errors and misdescriptions shall not annul the sale (x). Mere loose and indefinite expressions, such as ought to put a person on his guard, are not necessarily fatal (y). Where the particulars of sale of an advowson stated that "a voidance of this preferment is likely to occur soon," without stating the reasons which rendered it probable, it was held that the representation was so vague that it ought to have put the purchaser on making inquiry, and specific performance was decreed against him (z). Nor will a purchaser be allowed to take advantage of a mistake by which he is not prejudiced (a).

(s) See *Fife v. Clayton*, 13 Ves. 546.

(t) *Manser v. Back*, 6 Hare, 443, 446.

(u) *Shelton v. Livius*, 2 C. & J. 411, 416; 1 L. J. Ex. 139; *Page v. Cowasjee Eduljee*, L. R. 1 P. C. 127.

(x) *Calcraft v. Roebuck*, 1 Ves. 221; *White v. Bradshaw*, 16 Jur. 738; *Cudden v. Cartwright*, 4 Y. & C. 25; 4 Jur. 1180. For the effect of such a condition, see *post*, Chap. V.

(y) *Scott v. Hanson*, 1 Russ. & M. 128; 1 Sim. 13; *Jennings v. Broughton*, 17 Beav. 234; 5 De G. M. & G. 126; *Dimmock v. Hallett*, L. R. 2 Ch. 21, 27, 29.

(z) *Trower v. Newcome*, 3 Mer. 704.

(a) *Leach v. Mullett*, 3 C. & P. 115, 117; *Wright v. Wilson*, 6 C. & P. 734, n.; 1 Moo. & R. 207; cf. Sugd. 31; or of which he is aware; *Colby v. Gadsden*, 34 Beav. 416.

"The principle is that, if he gets substantially that for which he bargains, he must take a compensation for a deficiency in value" (b); for "it is impossible that all the little particulars relative to the quantity, title, situation &c. should be so specifically laid down as not to call for some allowance and consideration, when the bargain comes to be executed" (c). But the leaning of the courts is against the vendor, especially if he had the means of giving a correct description and neglected to do so (d). "The particulars are, in truth, like the description in a policy of insurance; the purchaser knows nothing but what the seller communicates" (e); and he has a right to presume that the seller is acting *bonâ fide* and has used due diligence.

As a general rule, mere expressions of praise, or affirmations of value, provided that they do not amount to an actual misstatement of facts, will not render the contract voidable by the purchaser; although their tendency would

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doubtless be to indispose the court to enforce specific performance at the suit of the vendor (f). Where an estate sold as a renewable leasehold was stated to be "nearly equal to freehold" (g), and where a house of mean character was described as "fit for a respectable family" (h), these were held to be mere puffs. Also, where land was called "un-

E.g.,
"nearly
equal to
freehold;"
"fit for a
respectable
family;"

(b) *Per Grant, M.R., in Dyer v. Hargrave*, 10 Ves. 505, 507.

(c) *Per Thurlow, L.C., in Calcraft v. Roebuck*, 1 Ves. 221, 224.

(d) In *Calverley v. Williams*, 1 Ves. 209, Thurlow, L.C., at p. 212, says: "Any person, however unacquainted with the actual situation of his estate, that will give a description, must be bound by that, whether correct or not." Cf. *Schneider v. Heath*, 3 Camp. 506.

(e) *Per Lord Ellenborough, C.J., in Tomkins v. White*, 3 Smith, 435, 439.

(f) See Dart, 99, 100.

(g) *Fenton v. Browne*, 14 Ves. 144.

(h) *Magennis v. Fallon*, 2 Mol. 561, 587; cf. *Johnson v. Smart*, 2 Giff. 151; 6 Jur. N. S. 815; and see *post*, p. 62.

“uncommonly rich water meadow” (i), whereas it was in fact imperfectly watered; and “fertile and improvable” (k), when part of it had been abandoned as useless, but was not proved to be irreclaimable; these statements were only regarded as flourishing descriptions of the auctioneer. Puffing statements are, however, to be avoided, not only because a certain amount of risk attends their use, but also because a too general employment of them tends to bring the profession into disrepute.

Catalogues. The same general rules apply to catalogues as to particulars, and the same necessity exists that, when the property is described in them, the description should be accurate. Where pictures sold were described as “views in Venice by Canaletto” (sic), it was held that it was rightly left to the jury to say whether the vendor meant to warrant that they were by Canaletti (l). Again, where two pictures were described as “a couple of Poussins,” it was left to the jury to say whether the purchaser bought them believing them from the vendor’s representation to be genuine; for, if so, he was not bound to take them, unless genuine (m). But when

(i) *Scott v. Hanson*, 1 Russ. & M. 128; 1 Sim. 13. But this case probably went too far; see Dart, 100. And where property described as “well supplied with water” was proved to be well supplied on payment of water rates, there being no natural supply, the purchaser was held entitled to compensation; *Leyland v. Illingworth*, 2 De G. F. & J. 248; 29 L. J. Ch. 611; and see *Higgins v. Samels*, 2 J. & H. 460, where the limestone of a quarry was said to be “fit for the London market” (such expression being used in the trade for lime of the best quality), whereas it was of an inferior quality, and specific performance was refused to the vendor.

(k) *Dimmock v. Hallett*, L. R. 2 Ch. 21, 27.

(l) *Power v. Barham*, 4 A. & R. 473.

(m) *Lomi v. Tucker*, 4 C. & P. 15; cf. *De Sewhanberg v. Buchanan*, 5 C. & P. 343, where, the facts being in dispute, Tindal, C.J., left it to the jury to say whether there was a warranty or only an expression of opinion by the vendor.

the artist by whom the pictures are asserted to have been painted has been dead for a long time, it may be that only an opinion can be expressed as to their genuineness, and that there is therefore no warranty (*n*). Where two pictures sold by auction were described in the catalogue, the one as being by Claude Lorraine, and the other as by Teniers, Lord Kenyon held that, in the absence of any proof of *mala fides*, this was merely intended as an expression of opinion and not as a warranty (*o*). Where a ship described as "copper fastened" proved to be only partially copper-fastened, the purchaser was held entitled to recover damages for breach of warranty, although she was sold with all faults (*p*). The meaning of the term "sound," when used on the sale of a horse, has been variously stated. Parke, B., has laid down the following rule (*q*): "If at the time of sale the horse has any disease, which either actually does diminish the natural usefulness of the animal, so as to make him less capable of work of any description, or which in its ordinary progress will diminish the natural usefulness of the animal, or if the horse has, either from disease or accident, undergone any alteration of structure, that either does at the time or in its ordinary effects will diminish the natural usefulness of the horse, such horse is unsound." A horse has been held to be unsound, when he has been nerved (*r*), or has bone-spavin in

Meaning
"sound-
ness" in
horses.

(*n*) See judgments of Lord Denman, C.J., and Williams, J., in *Power v. Barham*, *ubi supra*, observing on *Jendwine v. Slade*, *ubi infra*.

(*o*) *Jendwine v. Slade*, 2 Esp. 572. In this case, moreover, it was not distinctly proved that the pictures were not originals. Canaletti died in 1768; Claude Lorraine in 1682; Teniers (the younger) in 1694.

(*p*) *Shepherd v. Kain*, 5 B. & Ald. 240, where it was said that "with all faults" must mean all faults consistent with the article being what it was described to be.

(*q*) *Kiddell v. Burnard*, 9 M. & W. 668, 669, overruling *Bolden v. Brogden*, 2 Moo. & R. 113.

(*r*) *Best v. Osborne*, Ry. & M. 290.

the hock (*s*), ossification of the cartilages (*t*), the navicular disease (*u*), thick wind (*x*), or an unusual convexity of the eye, inducing him to shy (*y*), or is a roarer (*z*). Crib-biting is not unsoundness, but a vice (*a*). Goggles constitute unsoundness in sheep (*b*). Even if goods are sold "with all faults," the sale is nevertheless voidable, if the vendor knows of latent defects and uses secret means to conceal them or fraudulently misrepresents their condition (*c*). Mere silence is not, however, a misrepresentation. Where a person merely sold a glandered horse, knowing it to be so, it was held that the purchaser had no right of action (*d*).

Remarks on details of particulars. The following observations on the contents of particulars (and on the effect of misdescriptions &c.), following the order in which they have already been stated (see *ante*, pp. 48—50), may be found of use.

Kind of property. As regards the care to be taken in describing the character of the property. The courts in construing particulars have attached the following meanings to the following expressions, viz. :—

(*s*) *Watson v. Denton*, 7 C. & P. 85.

(*t*) *Simpson v. Potts*, Oliphant's Law of Horses, 3rd ed. 443.

(*u*) *Matthews v. Parker*, *ib.* 447.

(*x*) *Atkinson v. Horridge*, *ib.* 448.

(*y*) *Holyday v. Morgan*, 1 E. & E. 1 ; 28 L. J. Q. B. 9, where the Court held that any malformation existing from birth, which at the time of sale renders less fit for reasonable use, is unsoundness.

(*z*) *Onslow v. Eames*, 2 Stark. 81 ; but not so in *Bassett v. Collis*, 2 Camp. 523.

(*a*) *Scholefield v. Robb*, 2 Moo. & R. 210.

(*b*) *Joliff v. Bendell*, Ry. & M. 136 ; cf. Benj. 504 *et seq.*

(*c*) *Schneider v. Heath*, 3 Camp. 506 ; *Baglehole v. Walters*, 3 Camp. 154 ; note to *Mellish v. Motteux*, Peake, N. P. C. 116 ; *Shepherd v. Kain*, 5 B. & Ald. 240 ; *Pickering v. Dowson*, 4 Taunt. 779, 785 ; *Pettitt v. Mitchell*, 1 Car. & M. 424 ; 5 Sco. N. R. 721 ; 4 Man. & G. 819 ; 12 L. J. C. P. 9 ; 6 Jur. 1016 ; *Ward v. Hobbs*, 4 App. Cas. 13 ; 48 L. J. Q. B. 281.

(*d*) *Hill v. Balls*, 2 H. & N. 299 ; 27 L. J. Ex. 45 ; *Smith v. Hughes*, L. R. 6 Q. B. 597 ; 40 L. J. Q. B. 221 ; *Ward v. Hobbs*, 4 App. Cas. 13 ; 48 L. J. Q. B. 281.

By "ground rent," if unexplained, is to be understood a "Ground rent less than the rack-rent; its proper meaning is the rent at which land is let for building purposes (e). Where what was so called was in fact a sum in gross paid for the right of user of a pleasure-ground, the purchaser was allowed to rescind the contract and recover his deposit (f)."

Where property was described as customary leaseholds, renewable every twenty-one years, and it appeared that the premises were only held for an absolute term of twenty-one years, this was held to be error of description, and not of title, and the purchaser was held under the conditions of sale to be entitled to specific performance with a deduction from the price (g). "Renewable leaseholds."

Where redeemed land tax composed of distinct payments on separate properties was described as an aggregate sum issuing out of all, the misdescription was held fatal to the contract (h). "Land tax redeemed."

The expression "farm" includes woodland, part of the estate, although not in the occupation of the tenant (i). "Farm."

The expression "free public house" is a misdescription, when the lease contains a covenant to take the beer from a particular brewer (k). "Free public house."

A house where beer is sold by retail under a licence to sell "Beer-shop."

(e) *Dart*, 123; *Stewart v. Alliston*, 1 Mer. 26; *Lecoy v. Mogford*, 2 Jur. N. S. 1084.

(f) *Evans v. Robins*, 8 Jur. N. S. 846; cf. *Lanford v. Selmes*, 3 Kay & J. 220; 3 Jur. N. S. 859.

(g) *Newby v. Paynter*, 22 L. J. Ch. 871; 17 Jur. 483.

(h) *Cox v. Coventon*, 8 Jur. N. S. 1142; 10 W. R. 829. The proper evidence to support a statement that the land tax has been redeemed is the certificate of the commissioners or a copy of the register; it is not sufficient to say that none has been paid subsequently to a certain date; *Poppleton v. Buchanan*, 4 C. B. N. S. 20; 27 L. J. C. P. 210.

(i) *Dart*, 123.

(k) *Jones v. Edney*, 3 Camp. 285; *Modlen v. Snowball*, 29 Beav. 641; 31 L. J. Ch. 44; 7 Jur. N. S. 1260.

- “Beer-house.” beer “not to be drunk on the premises” has been held to be a “beer-shop” (*l*), but it would not be correctly described as a “public house, tavern or beer-house” (*m*).
- “The house in the occupation of P.” Where a house was described as “the house in the occupation of P.,” the expression was held sufficient to include an ornamental frontage belonging to the house sold, but extending over a portion of the one adjoining (*n*).
- “Brick-built house.” The term “brick-built house” is understood to mean brick-built in the ordinary sense of the word; a house built externally partly of brick, partly of timber and lath and plaster, does not fulfil the description (*o*); but the words “substantial and convenient” are merely relative, and a purchaser was held to his bargain, where, in a house so described, one of the external walls was only half a brick in thickness (*p*). Where a lessor represented the drainage of a house as good, whereas it was so bad that the lessee was obliged to leave, the latter obtained a rescission of the lease with damages (*q*).
- “Good drainage.”
- “Party wall.” The most common and the primary meaning of the term “party wall” is a wall of which two adjoining owners are tenants in common. The expression is also used to signify a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners; or a wall

(*l*) *Bishop of St. Albans v. Battersby*, 3 Q. B. D. 359; 47 L. J. Q. B. 571; *London & Suburban Land & Building Co. v. Field*, 16 Ch. D. 645; *Nicol v. Fenning*, 19 Ch. D. 258; 30 W. R. 95.

(*m*) *Pease v. Coats*, L. R. 2 Eq. 688; 36 L. J. Ch. 57; *Holt v. Collyer*, 16 Ch. D. 718, where Fry, J., at p. 721, says: “Whereas a beer-house means a place where beer is sold to be consumed on the premises, a beer-shop is a place where beer is sold to be consumed off the premises.”

(*n*) *Fox v. Clarke*, L. R. 9 Q. B. 565; 43 L. J. Q. B. 178; it also includes the cellar; *Whittington v. Corder*, 16 Jur. 1034; 20 L. T. O. S. 175.

(*o*) *Powell v. Dubble*, Sugd. 29.

(*p*) *Johnson v. Smart*, 2 Giff. 151; 6 Jur. N. S. 815; cf. *Robinson v. Musgrove*, 8 C. & P. 469; 2 Moo. & R. 92.

(*q*) *Kinnaird v. Smith*, W. N. 1881, 82.

belonging entirely to one of the adjoining owners, but subject to an easement or right to have it maintained as a dividing wall between the two tenements. The term is so used in some of the Building Acts (*r*).

The word "fixtures" means anything annexed to the freehold in such a manner as to become parcel of it. "Landlord's fixtures" comprise those put up by the landlord and such as are put up by a tenant during his term and which he has no right to remove.

Tenant's fixtures are personal chattels annexed to the freehold by the tenant during the term, either for the purposes of his trade or for mere ornament and convenience, and which he has a right to sever and remove, during the term, in the absence of any express stipulation or local custom to the contrary. But they do not include buildings of a permanent character, although built for the purposes of trade, nor such ornaments &c. as cannot be removed without injury to the premises (*s*).

It depends on the circumstances of each case whether the variation between the actual quantity and the quantity stated is or is not material (*t*). "If the price of an estate is

"Landlord's fixtures."

"Tenant's fixtures."

Quantity and extent of property.

(*r*) *Per* Fry, J., in *Watson v. Gray*, 14 Ch. D. 192, 194; 49 L. J. Ch. 243. It also designates a wall divided longitudinally into two moieties, each subject to an easement in favour of the owner of the other; *ib*.

(*s*) Woodf. L. & T., 594 *et seq.* Fixtures, when separately assigned or charged, but (excepting trade machinery) not otherwise, come within the meaning of the term "personal chattels," as used in 41 & 42 Vict. c. 31 (Bills of Sale Act, 1878), s. 4, and they are not deemed to be separately assigned, when the land or buildings to which they are affixed passes by the same instrument; s. 7. See *In re Armytage*, 14 Ch. D. 379. They are not "goods and chattels" within the reputed ownership clause of the Bankruptcy Act, 1869; see notes to *Horn v. Baker*, 2 Sm. L. C. 205. Cf. *post*, p. 92.

(*t*) 41 & 42 Vict. c. 49, s. 3, enacts that "the same weights and measures shall be used throughout the United Kingdom." See ss. 19, 20, 22 and 24. For table of measures &c. under this act, see *post*, Appendix. It has been held that s. 6 of the repealed act 5 & 6

Effect of
qualifying
expres-
sions.

not regulated by the acreage of the property, but by its peculiar situation or adventitious value, and the quantity is stated as mere matter of description or opinion, and not as the result of actual admeasurement, the purchaser may be compelled to take the estate, and will not be entitled to any abatement of his purchase-money, if the actual quantity falls short of the estimated quantity" (*u*). If the price is regulated by the quantity, and the vendor has innocently misrepresented the quantity, the rule has been stated to be that the purchaser has a right to have what the vendor can give, with an abatement out of the purchase-money for so much as the quantity falls short of the representation (*x*). Qualifying expressions, such as "containing by estimation," "more or less," "or thereabouts," &c., have been held to import that the precise quantity is not warranted; but although they will cover small and unintentional errors and inaccuracies, they will not cover careless and reckless statements. In one case, where the particulars described the estate as "containing by estimation 41 acres, be the same more or less," when in reality it only contained 35 or 36, the purchaser was held not entitled to an abatement of the

Will. IV. c. 63, which enacted that all local and customary measures should be abolished, did not make illegal a contract for sale by a local or customary measure, provided that such measure was a multiple of the standard unit and employed merely as a local term to designate a given number of such unit; *Hughes v. Humphreys*, 3 E. & B. 954; 23 L. J. Q. B. 356; *Giles v. Jones*, 11 Ex. 393; 24 L. J. Ex. 259; cf. *Butler's Weights and Measures* and *Whiteley's Law of Weights and Measures, passim*. There are, however, said to be two descriptions of admeasurement, one the landlord's, or selling, measure, including the hedges, fences and ditches, growing bushes and underwood in the divisions between closes; and the other the tenant's, or agricultural, measure, including only the ploughing or mowing acre; 1 Ch. Pr. 181.

(*u*) Add. Con. 407.

(*x*) And it is immaterial, whether the land is professedly sold by the acre, or not; *per Grant, M.R.*, in *Hill v. Buckley*, 17 Ves. 394, 401; *King v. Wilson*, 6 Beav. 124.

purchase-money (*y*). Also, where the property was stated to contain 1a. 2r. 8p., but the abstract of title, when delivered, showed a title only to 3r. 24p., it was held that the purchaser was bound (*z*). In another case the property was described as containing "7683 square feet, or thereabouts," whereas it in fact contained only 4350 square feet. There was a condition that "the measurements are presumed to be correct, but if any error be discovered therein, no allowance shall be made or required either way." The purchaser filed a bill for specific performance with compensation, after the vendor had offered to rescind the contract. It was held that, in the face of the above condition, the purchaser was not entitled to compensation, and, as he did not ask to have the contract rescinded, he must take the property without compensation (*a*). The Court would not, probably, have enforced specific performance at the suit of the vendor (*b*). Where a lessee agreed to take a farm of 249 acres, whereas it contained only 214, he was held entitled to a lease of the 214 acres at a reduced rent (*c*). And where a farm was stated to contain "349 acres or thereabouts," but contained 349 customary acres only, being a hundred acres, or more, less than the same number of statutory acres, the purchaser was allowed to rescind the contract (*d*).

In another case, where the tenant in possession purchased

(*y*) *Winch v. Winchester*, 1 V. & B. 375. *Semble*, otherwise, if the vendor had been personally aware of the exact quantity.

(*z*) *Nicholl v. Chambers*, 11 C. B. 996; 21 L. J. C. P. 54; the conditions providing that the quantity should be taken as stated, whether more or less, although the title-deeds should state it to be less.

(*a*) *Cordingley v. Cheeseborough*, 3 Giff. 496; 8 Jur. N. S. 585, 755; 31 L. J. Ch. 617; 6 L. T. N. S. 15, 342; cf. *Earl of Durham v. Legard*, 34 Beav. 611; 34 L. J. Ch. 589.

(*b*) *Whittemore v. Whittemore*, L. R. 8 Eq. 603, 606.

(*c*) *M'Kenzie v. Heskest*, 7 Ch. D. 675; 47 L. J. Ch. 231.

(*d*) *Portman v. Mill*, 2 Russ. 570; cf. *Price v. North*, 2 Y. & C. 620;

property represented to be 46 feet in depth, but which proved to be only 33 feet, he was held entitled to an abatement (*e*). And in a more recent case, where property was stated to contain "753 square yards, or thereabouts," whereas it contained 573 square yards only, compensation was ordered to be given to the purchaser, notwithstanding that one of the conditions of sale provided that no error or misstatement should annul the sale or entitle the purchaser to compensation (*f*). Mutual compensation was decreed in one case, where several lots were purchased, and in one the quantity was larger, and in another smaller, than stated, the conditions of sale having provided for such a contingency (*g*).

"Land" includes timber.

If the property is described as land, and the timber is not expressly excluded, the purchaser is not bound to take the estate without the timber that is growing on it (*h*).

"Timber," what is. By general law.

"The question of what timber is depends, first, on general law; and, secondly, on the special custom of a locality. By general law, oak, ash and elm are timber, provided they are of the age of twenty years and upwards, provided also they are not so old as not to have a reasonable quantity of useable wood in them, sufficient, according to a text writer, to make a good post. Timber, that is, the kind of tree which may be called timber, may be varied by local custom. There is what is called the custom of the country, that is, of a particular county or division of a county; and it varies in

By custom.

from which case it appears that a misdescription of the quantity of land in regard to acres being statutory or customary is not matter for compensation, but for rescinding the contract.

(*e*) *King v. Wilson*, 6 Beav. 124.

(*f*) *Whittemore v. Whittemore*, L. R. 8 Eq. 603; cf. Dart, 648.

(*g*) *Leslie v. Thompson*, 20 L. J. Ch. 561; 15 Jur. 717; cf. *M'Kenzie v. Hesket*, 7 Ch. D. 675; 47 L. J. Ch. 231. The better way is to state the quantity according to the tithe map.

(*h*) *Duke of St. Albans v. Shore*, 1 H. Bl. 271, 281.

two ways. First of all, you may have trees called timber by the custom of the country—beech in some counties (i), hornbeam in others, and even white-thorn and black-thorn and many other trees (k) are considered timber in peculiar localities, in addition to the ordinary timber trees. Then, again, in certain localities, arising probably from the nature of the soil (l), trees of even twenty years old are not necessarily timber, but may go to twenty-four years, or even to a later period, I suppose, if necessary; and in other places the test of when a tree becomes timber is not its age, but its girth (m). These, however, are special customs" (n).

"The word 'trees,' generally speaking, means wood applicable to buildings, and does not include orchard "Trees." trees" (o); and where a lease contained an exception of "all timber and other trees, but not the annual fruit thereof," "Annual fruit." garden and orchard trees were held not to be within the exception, the term fruit being frequently, in the old law books, used to denote the produce, not only of orchard trees, but also of timber trees (p).

Where timber or other trees are to be taken by the pur-

(i) *Matthews v. Matthews*, 7 C. B. 1018.

(k) *E.g.*, birch trees in Yorkshire, willows in Hampshire; Woodf. L. & T. 590; but apparently not in Leicestershire; *Phillips v. Smith*, 14 M. & W. 589; 15 L. J. Ex. 201; and horse-chestnuts, limes, asp and walnut trees. As to pollards the point seems doubtful; Woodf. L. & T. 590.

(l) The test appears to be, whether the trees are used for building purposes. If the soil is unsuitable, the tree will, of course, be the longer in arriving at maturity.

(m) But only trees of not less than six inches in diameter, or two feet girth, allowing for irregularities of shape, appear to be considered timber; Woodf. L. & T. 590, referring to *Whitty v. Lord Dillon*, 2 F. & F. 67.

(n) *Per Jessel, M.R.*, in *Honywood v. Honywood*, L. R. 18 Eq. 306, 309; 43 L. J. Ch. 652.

(o) *Per Littledale, J.*, in *Bullen v. Denning*, 5 B. & C. 842, 851.

(p) *Bullen v. Denning*, 5 B. & C. 842. The terms of the exception being ambiguous, the court construed them against the lessor, in whose favour they were made.

chaser at a valuation, it should be stated accurately for what trees he is to pay (*q*).

Size of trees, if stated, must be stated accurately.

In describing timber, the size of the trees, if stated at all, should be stated with as much accuracy as possible ; for where the particulars described the property as "a wood, with upwards of 65 acres of fine oak timber trees, the average size of which approaches 50 feet," the number of trees not being stated, whereas it appeared that the average size did not, even according to the vendor's showing, exceed 35 feet, the statement in the particulars was held to be a definite representation of the size of the trees, the sale having been held in July, when, owing to the foliage, it was impossible to view the wood ; and a bill filed by the vendor to enforce specific performance was dismissed, but without costs (*r*).

Situation of property.

Where an estate was described as being about one mile from a borough town, when in fact it was three or four miles distant, Lord Ellenborough, C. J., left it to the jury to say whether it was merely an erroneous statement, or a misdescription wilfully introduced for the purpose of enhancing the value of the land : in the former case, the contract would be saved by the condition of sale which provided that no error or misstatement should vitiate the sale ; in the latter case, the purchaser would be relieved from the contract. The jury found for the purchaser, who had brought an action to recover his deposit (*s*). Any gross variance between the actual state of facts and the facts stated in the particulars would always be strong evidence on which a jury might find that the misstatement was wilful. In describing houses in

(*q*) Sugd. 32 ; *Higginson v. Clowes*, 15 Ves. 516.

(*r*) *Lord Brooke v. Rounthwaite*, 5 Hare, 298 ; 15 L. J. Ch. 332 ; 10 Jur. 656.

(*s*) *Duke of Norfolk v. Worthy*, 1 Camp. 340

towns, the street in which they are situate, and their number in that street, must be correctly stated ; a mistake in the number may be fatal (*t*). Where there are gardens attached, or where the property is mixed up with other property, reference to a plan is advisable. It would appear to be sufficient to describe the house by the name or number which it commonly bears. Thus, where a house at Brighton was described as No. 39, Regency Square, and it turned out that the house was not actually in the square, but in a side street communicating therewith, but was always named 39, Regency Square, specific performance was decreed against the purchaser (*u*). Although a reference to the number may be sufficient, care must be taken that, if any further description is added, such description is accurate. Where a house described as No. 58 on the north side of Pall Mall, opposite to Marlborough House, was proved to be, not in Pall Mall, but behind No. 57, Pall Mall, and to be only connected with Pall Mall by a narrow passage leading through the ground floor of No. 57 and communicating with the street by a door numbered 58, this would have been held a material misdescription, if the purchaser had not waived it by his conduct, as it could not be said to be opposite Marlborough House (*v*). The contract was, however, rescinded on the ground that there was a misdescription of the means of access to the house.

Where the description of the situation of the property, General
description

(*t*) *Leach v. Mullett*, 3 C. & P. 115. In that case there were, however, several other misstatements.

(*u*) *White v. Bradshaw*, 16 Jur. 738. The decision might have gone the other way, if the particulars had contained a reference to the square possessing peculiar advantages, such as a sea-view, and it had appeared that those advantages, though enjoyed by other houses in the square, were not enjoyed by No. 39 ; Dart, 136.

(*v*) *Stanton v. Tattersall*, 1 Sm. & G. 529, 535 ; 17 Jur. 967, 969.

of situation.

though general, is definite, as, "the mill property, including cottages, in Esher village" (*x*), or "three leasehold houses in Coity, held by mortgagor under a lease" of named date (*y*), specific performance will be decreed, parol evidence being admitted to show what property was intended; but if the property be described by reference to a plan or instrument so vague as not to admit of a legal construction, the defect would, it is conceived, be fatal (*z*).

The tenure.

Agreement to sell land an agreement to sell fee simple.

The tenure must be clearly stated, as also the vendor's interest, if it be not an estate in fee-simple; for a general agreement to sell land imports an agreement to sell the whole of the vendor's interest in it (*a*), and in the absence of any specific description or stipulation such interest is understood to mean an estate in fee simple (*b*). And if the vendor cannot show a title as to part, the purchaser will not be bound to complete, if the hope of his obtaining that part was the inducement to him to purchase the whole (*c*); but he may compel the vendor to convey to him that part to which he has a title, with compensation for the rest. Therefore, when the vendors agreed to sell the entirety of certain freehold property and to make out a good marketable title, and it was subsequently discovered that they were entitled

(*x*) *M'Murray v. Spicer*, L. R. 5 Eq. 527; 37 L. J. Ch. 505.

(*y*) *In re Boulter*, 4 Ch. D. 241.

(*z*) Dart, 219, and cases there cited. As to the admissibility of parol evidence to identify property generally, see *post*, p. 151.

(*a*) *Bower v. Cooper*, 2 Hare, 408.

(*b*) Dart, 115; *Hughes v. Parker*, 8 M. & W. 244; 10 L. J. Ex. 297; *Dillwyn v. Llewellyn*, 31 L. J. Ch. 658, 660; *Cattell v. Corral*, 4 Y. & C. 228, 236; *Phillips v. Caldclough*, L. R. 4 Q. B. 159; 38 L. J. Q. B. 68; *Hughes v. Jones*, 31 L. J. Ch. 83; 8 Jur. N. S. 399; 10 W. R. 139. But it may be shown, even in an action for specific performance, that the purchaser knew the actual nature of the vendor's interest; *Cox v. Middleton*, 2 Drew. 209; 23 L. J. Ch. 618.

(*c*) *Peers v. Lambert*, 7 Beav. 546; *Gibson v. Spurrier*, Peake, Add. Cas. 49.

to only a moiety of the property, specific performance of the agreement was decreed at the suit of the purchaser against them as to the moiety, with an abatement of one-half of the purchase-money (*d*). Where property described as freehold turned out to be copyhold, the purchaser was allowed to rescind the contract, although manorial rights had not been exercised for a long time (*e*). Enfranchised copyholds must be so described, and not as freeholds, especially where the minerals belong to the lord (*f*). The general rule is that, if an estate is sold as freehold, when it is in fact copyhold, the purchaser is not obliged to accept it (*g*).

Where property has been described as "partly freehold, partly leasehold," and the boundaries distinguishing the one from the other, though capable of being ascertained with certainty, have not theretofore been clearly defined, the purchaser will be bound, whether the extent be more or less (*h*).

Where property sold as copyhold turned out to be partly freehold, it was held that the vendor could not compel specific performance: "the motives and fancies of mankind are infinite, and it is unnecessary for a man who has con-

(*d*) *Hooper v. Smart*, L. R. 18 Eq. 683; cf. *Barker v. Cox*, 4 Ch. D. 464; 46 L. J. Ch. 62; *Burrow v. Scammell*, 19 Ch. D. 175.

(*e*) *Turner v. Guardians of West Bromwich Union*, 9 W. R. 155; 3 L. T. N. S. 662. But where land sold as freehold turned out to be copyhold, but it also appeared that under a composition with the lord, the rights of the copyholders were such as to render the tenure hardly different from that of freehold, it was held that a purchaser who had taken objections after the time prescribed in the conditions of sale was bound to complete. *Semble*, otherwise, if the misdescription had been wilful; *Price v. Macaulay*, 2 De G. M. & G. 339.

(*f*) *Upperton v. Nicholson*, L. R. 6 Ch. 436. If the property has been enfranchised under the copyhold acts, the fact should be stated, to avoid dispute as to reservations in favour of the lord under s. 48 of the act of 1852.

(*g*) *Twining v. Morrice*, 2 Br. C. C. 326, 330; *Sir Harry Hick v. Phillips*, Pr. Ch. 575; *Hart v. Swaine*, 7 Ch. D. 42; 47 L. J. Ch. 5, where the sale was set aside after conveyance.

(*h*) *Monro v. Taylor*, 8 Hare, 51.

tracted to purchase one thing to explain why he refuses to accept another" (*k*). And a purchaser of a lease having eight years to run cannot be compelled to take a lease of only six years with an abatement of the price (*l*). But a small difference in the duration of the term is not so material. Where a lease stated to be for ninety-nine years turned out to be for ninety-seven years, the purchaser was held bound to complete on receiving a proportionate abatement (*m*).

Rever-
sionary
estate.

Where property was offered for sale as a reversionary estate absolute on the death of a person aged sixty-six, whereas the party was only sixty-four, and the reversion was not absolute, the purchaser was held entitled to rescind the contract, notwithstanding that there was a condition for compensation (*n*). And it would seem that a purchaser could resist specific performance, if leaseholds were described as renewable by custom, when no such custom existed (*o*).

Under-
lease.

If the property is held on an underlease, or other property be held with it under the lease, the fact should be stated; for a concealment of the fact might entitle the purchaser to rescind the contract (*p*). Where premises were described as "a freehold house and garden, with a coach-house and stable held on a lease" of named term and at a stated ground-rent, and it appeared on investigation that the coach-house and stable were held on an underlease,

(*k*) *Per Romilly, M.R.*, in *Ayles v. Cox*, 16 Beav. 23, 24.

(*l*) *Farrer v. Nightingale*, 2 Esp. 639.

(*m*) *Halsey v. Grant*, 13 Ves. 73, 77; cf. *Mortlock v. Buller*, 10 Ves. 292, 306; *Belworth v. Hassell*, 4 Camp. 140.

(*n*) *Sherwood v. Robins*, 3 C. & P. 339; *Moo. & M.* 194.

(*o*) *Newby v. Paynter*, 22 L. J. Ch. 871; 17 Jur. 483.

(*p*) *Blake v. Phinn*, 3 C. B. 976; 16 L. J. C. P. 159; *Law v. Urwin*, 16 Sim. 377; *Madeley v. Booth*, 2 De G. & S. 718; *Brumfit v. Morton*, 3 Jur. N. S. 1198; *Hayford v. Criddle*, 22 Beav. 477, 479; *Darlington v. Hamilton*, 1 Kay, 557; 23 L. J. Ch. 1000, where the point was considered doubtful; but see *Camberwell and South London Building Society v. Holloway*, 13 Ch. D. 754; 49 L. J. Ch. 361.

together with some other buildings, at a higher ground rent than that stated, and that the underlease was subject to the rent reserved by the superior lease, and liable to forfeiture on non-payment or non-observance of the covenants contained in the superior lease, the purchaser was allowed to rescind the contract, the coach-house and stable being held to be a material portion of the property, and therefore a defect in title as to them not cured by the compensation clause in the conditions (*g*).

If the property put up for sale, or any portion of it, is let, the particulars should state the nature and term of the tenancy, the names of the tenants or tenant, the amount of rent, and any unusual covenants restrictive of absolute ownership (*r*). Where premises were stated to be in the joint occupation of A. and B. as lessees, when in fact they had been demised to C., and by C. assigned to A., who was, together with B., in the occupation of them at the time of sale, the vendor would not, apparently, have been entitled to compel the purchaser to complete, even with compensation (*s*). And where part of the property was misstated to be let at a named rent, and other parts to named tenants at certain rents, but the tenancies had determined under notices, the purchaser was allowed to rescind the contract, notwithstanding that there was a condition providing for compensation (*t*). And where a lessee of lands subject to a covenant against certain obnoxious trades, with a proviso for re-entry, granted underleases of houses erected on the land,

Nature of
tenancy.

Names of
tenants.

Nature of
covenants.

(*g*) *Turner v. Turner*, W. N. 1881, 70; cf. *Dobell v. Hutchinson*, 3 A. & E. 355; 5 N. & M. 251; 1 Har. & W. 394.

(*r*) 1 Dav. 515.

(*s*) *Ridgway v. Gray*, 1 Mac. & G. 109; 1 H. & Tw. 195; but if the purchaser had known the actual facts, he would have been compelled to complete; *Farebrother v. Gibson*, 1 De G. & J. 602.

(*t*) *Dimmock v. Hallett*, L. R. 2 Ch. 21.

not containing a similar covenant or proviso, it was held that a purchaser by auction of other houses on the same land and of the improved ground rents of the houses so underlet might recover back his deposit, the omission in the underleases not having been mentioned (*u*). And a vendor of property in lease is not justified in stating in the particulars the existence of covenants beneficial to the estate, which he has good reason to believe cannot be enforced (*x*).

Income.

“Clear
yearly
rent.”

It is usual to insert the amount of rent which the estate produces, or is capable of producing; and the amount, if known, should be accurately stated, or a fair estimate of it given, otherwise the purchaser will be entitled to compensation (*y*), or even to be discharged from the contract (*z*). Such an expression as “clear yearly rent” means that the income is clear of all outgoings usually borne by the tenant, but subject to such (*e.g.* land-tax) as are usually borne by the landlord (*a*).

Rights of
other
parties.

The rights of other parties must be accurately stated, for the interest offered for sale will be presumed to be accompanied by all those advantages which are legally incident to it (*b*), and the omission to mention any charge upon the

(*u*) *Waring v. Hoggart*, Ry. & M. 39.

(*x*) *Dart*, 119; *Flint v. Woodin*, 9 Hare, 618; 16 Jur. 719, 720.

(*y*) *Lydney v. Selby*, 2 Ld. Raym. 1118; 1 Salk. 211, *sub nom.* *Risney v. Selby*. But in *White v. Cuddon*, 8 Cl. & Fin. 766; 6 Jur. 471, where the nature of the income was misstated, but the amount proved to be greater, that was held to be not such a misdescription as to entitle the purchaser to compensation.

(*z*) *Swaisland v. Dearsley*, 29 Beav. 430; 30 L. J. Ch. 652; *Dimmock v. Hallett*, L. R. 2 Ch. 21.

(*a*) *Earl of Tyrconnell v. Duke of Ancaster*, Amb. 237; 2 Ves. Sen. 500; Sugd. 28. Ordinarily all rates and taxes fall upon the tenant, in the absence of express agreement. See Woodf. 528, where the exceptions to the general rule are stated.

(*b*) *Dart*, 115, and cases there cited.

estate or any right restrictive of the purchaser's absolute enjoyment of it may render the sale voidable by the purchaser, or at any rate entitle him to compensation (*c*). Where a purchaser discovered that another person had a right to dig coal, he was held entitled to compensation (*d*). And specific performance against a purchaser was refused, where land sold by auction was described as eligible for building purposes, whereas it afterwards appeared that third parties had a right to have water supplied through portions of the land by means of an underground watercourse, with liberty to open and clean the same on making satisfaction for damage done by them in doing so (*e*). And where land was sold with a reservoir and waterworks yielding a yearly rental of £60, and it was discovered that this rent arose from supplying houses separated from the reservoir by the property of strangers, over which the vendor had merely a permissive right to convey it, the Court held that he could not enforce specific performance (*f*).

And if a house be sold "with all lights" belonging to it, "With all a statement in the particulars that adjoining land is build- lights." ing land belonging to the vendor does not authorize the vendor, or a purchaser from him, to build upon the adjoining land so as to obstruct such lights (*g*). The two following

(*c*) Dart, 116, and cases there cited; *Snelling v. Thomas*, L. R. 17 Eq. 303; 43 L. J. Ch. 506.

(*d*) *Ramsden v. Hurst*, 4 Jur. N. S. 200; 6 W. R. 349; *Seaman v. Paudrey*, 16 Ves. 390.

(*e*) *Shackleton v. Sutcliffe*, 1 De G. & S. 609; 12 Jur. 199.

(*f*) *Price v. Macaulay*, 2 De G. M. & G. 339, where the objection was taken after the time prescribed in the conditions.

(*g*) *Swanborough v. Coventry*, 9 Bing. 305; 2 Moo. & S. 362; 2 L. J. C. P. 11, explained in *Wheeldon v. Burrows*, 12 Ch. D. 31; 48 L. J. Ch. 853; and see *Booth v. Alcock*, L. R. 8 Ch. 663; 42 L. J. Ch. 557; *Master v. Hansard*, 4 Ch. D. 718; 46 L. J. Ch. 505; *Allen v. Taylor*, 16 Ch. D. 355; 50 L. J. Ch. 178.

general rules have been laid down by Thesiger, L.J., as applicable to cases where one lot of several is sold. 1st. On the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. 2nd. If the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant (*h*).

Incum-
brances.

And all incumbrances should be mentioned (*i*). Where property subject to two mortgages was described in the particulars as an absolute reversion, no mention being made of the mortgages, the purchaser was allowed to rescind the contract (*j*). And where property was sold as freehold, without reference to the fact that part of it was out upon leases for lives, the vendor was held not entitled to enforce specific performance (*k*). And anything which may determine the vendor's interest should appear (*l*); for, where a redeemable annuity was sold simply as an annuity (*m*), and

When
vendor's
interest
determin-
able.

(*h*) *Wheddon v. Burrows*, 12 Ch. D. 31, 49; 48 L. J. Ch. 853, 856; where it was, however, said that the grantor would be entitled as of right to a way of necessity; considered in *Allen v. Taylor*, 16 Ch. D. 355; 50 L. J. Ch. 178; but it seems that such way would be only such a right of way as would enable the grantor to enjoy his portion of the tenement in the condition in which it happened to be when the other portion of the tenement was sold; see *Corporation of London v. Riggs*, 13 Ch. D. 798; 49 L. J. Ch. 297.

(*i*) The fraudulent concealment of an incumbrance is a misdemeanour; 22 & 23 Vict. c. 35, s. 24. See *Smith v. Robinson*, 13 Ch. D. 148.

(*j*) *Torrance v. Bolton*, L. R. 14 Eq. 124; 41 L. J. Ch. 643; aff. L. R. 8 Ch. 118; 42 L. J. Ch. 177.

(*k*) *Hughes v. Jones*, 31 L. J. Ch. 83; 8 Jur. N. S. 399; 10 W. R. 139.

(*l*) Dart, 117.

(*m*) *Coverly v. Burrell*, 5 B. & Ald. 957.

leasehold houses were sold without mention of a private act of parliament which gave a company the right to purchase them, the sales were held invalid (*n*). But it is not necessary to mention matters, affecting the property, of which the purchaser has notice. On the sale of leaseholds the vendor is not bound to state that the covenants in the lease are unusually stringent, as notice of the lease is notice of its contents (*o*) ; but in such a case a reasonable opportunity ought to be allowed the purchaser of examining the lease (*p*). And any liability to which a purchaser will be subject under the lease should be stated, if it is not such as would appear on the face of the lease itself. Where a lease containing the usual covenant to deliver up the premises in good repair at the end of the term is sold, and any of the demised buildings have been removed, the fact should be stated ; the mere omission of the buildings from the particulars will not debar the purchaser from rescinding the contract (*q*). And also, where a landlord had given notice to his lessee (under a covenant in the lease) that he should re-enter, if the premises were not put into repair within three months, and the auctioneer put up the lease for sale without communicating the notice to the purchaser, the latter was held entitled to recover his deposit from the

Not
necessary
to mention
matters of
which pur-
chaser has
notice.

Liability
under
covenants
should be
stated,
when.

(*n*) *Ballard v. Way*, 1 M. & W. 520. The decision would perhaps have gone the other way, if the company's rights had been given by a public act.

(*o*) *Dart*, 117 ; *Hall v. Smith*, 14 Ves. 426 ; *Pope v. Garland*, 4 Y. & C. 394 ; 10 L. J. Ch. (Ex. Eq.), 13 ; *Paterson v. Long*, 6 Beav. 590 ; 13 L. J. Ch. 1 ; *Lewis v. Bond*, 18 Beav. 85 ; *Patman v. Harland*, 17 Ch. D. 353 ; 50 L. J. Ch. 642. As to underleases, see *Flight v. Barton*, 3 Myl. & K. 282 ; *Hayford v. Criddle*, 22 Beav. 477. In *Darlington v. Hamilton*, 1 Kay, 550 ; 23 L. J. Ch. 1000, it was considered doubtful whether the doctrine that a purchaser of leaseholds, or of freeholds subject to a lease, has notice of the covenants in the lease can be extended to fix him with notice of collateral facts stated in such covenants.

(*p*) *Brumfit v. Morton*, 3 Jur. N. S. 1198, 1202.

(*q*) *Granger v. Worms*, 4 Camp. 85.

auctioneer, although he knew the dilapidated state of the premises at the time of sale (*r*). If the covenants of a lease are set out, they ought to be stated exactly, and without concealment of material facts. “Common and usual covenants,” in a lease of a public-house, have been construed to include covenants to pay land-tax, sewers-rate and other taxes, and a proviso for re-entry if any business but that of a licensed victualler should be carried on in the house (*s*).

“Common and usual covenants.”

Where the particulars stated that no offensive trade was to be carried on, and that the premises could not be let to a coffee-house keeper or working hatter, and the original lease prohibited the businesses of brewer, baker, sugar-baker, vintner, victualler, butcher, tripe-seller, poulterer, fish-monger, cheese-seller, fruiterer, herb-seller, coffee-house keeper, working hatter, and many others, and the sale of coals, potatoes, or any provisions, it was held that the description was insufficient, and that the purchaser might rescind the contract (*t*).

“No offensive trade.”

Any easements over the property should be noticed, such as rights of way (*u*) ; also all rights of sporting (*x*), of common (*y*), and the like (*z*).

Easements, &c.

(*r*) *Stevens v. Adamson*, 2 Stark. 422.

(*s*) *Bennett v. Womack*, 7 B. & C. 627 ; 1 Man. & R. 644.

(*t*) *Flight v. Booth*, 1 Bing. N. C. 370 ; 3 L. J. C. P. 66.

(*u*) *Dykes v. Blake*, 4 Bing. N. C. 463 ; 6 Sco. 320 ; 7 L. J. C. P. 282 ; 10 W. R. 665 ; cf. *post*, p. 80, note (*o*). But if the right of way be patent and obvious, the maxim *caveat emptor* applies ; *Bowles v. Round*, 5 Ves. 509.

(*x*) *Burnell v. Brown*, 1 Jac. & W. 168.

(*y*) *Gibson v. Spurrier*, Peake, Add. Cas. 49.

(*z*) There is a difference between an easement and a mere licence. A. & B. were tenants of adjoining premises under the same landlord. On A.'s premises was a well, from which B.'s premises were supplied with water by means of a pipe. At a sale by auction of the landlord's property A. and B. purchased their respective premises, “subject to all rights of way and water and other easements, if any, subsisting thereon.” Held that B. had no easement or right of water, but merely a licence from his landlord during his tenancy ; *Russell v. Harford*, L. R. 2 Eq. 507.

Anything in the nature of a permanent charge, such as Outgoings ground rents (*a*) or a rent charge (*b*), on the property should be stated (*c*); and it is advisable, even where it distinctly appears by the particulars that the land is held of a manor, to refer to the existence of quit rents and heriots, as the fact of their non-disclosure may at least entitle the purchaser to compensation (*d*); but it is not necessary on the sale of copyholds to refer to the fines or customs of the manor (*e*), although it is expedient to mention at least the fines, as the value of the property depends a good deal on the fact whether the fines are arbitrary or fixed (*f*). Although it does not seem to be necessary to mention rates and taxes to which the property is subject under a public, though local, act of parliament (*g*), they ought to be stated, if levied under a private act (*h*).

Where on the sale of leasehold premises it was stated that all outgoings up to a day named were to be cleared by the vendors, the Court held that an apportioned part of the current rent from the last quarter-day to the day named was an outgoing and must be allowed to the purchaser (*i*).

(*a*) *Jones v. Rimmer*, 14 Ch. D. 588; 49 L. J. Ch. 775; *Mills v. Oddy*, 6 C. & P. 723; *Barnwell v. Hurris*, 1 Taunt. 430.

(*b*) Sugd. 312.

(*c*) If the estate be liable to repair the chancel of a church, a purchaser buying without notice would not, apparently, be compelled to perform the contract; *Horniblow v. Shirley*, 13 Ves. 81; cf. *Binks v. Rokeby*, 2 Swan. 222.

(*d*) Dart, 118; *Damerell v. Protheroe*, 10 Q. B. 20; 16 L. J. Q. B. 170; *Lord Chichester v. Hall*, 17 L. T. O. S. 121.

(*e*) Dart, 117; *Brumfit v. Morton*, 3 Jur. N. S. 1198.

(*f*) 1 Dav. 514.

(*g*) *Barraud v. Archer*, 2 Sim. 433; aff. 2 Russ. & M. 751.

(*h*) *Ballard v. Way*, 1 M. & W. 520. If any rates and taxes, usually borne by the tenant, are borne by the landlord, the fact should be mentioned.

(*i*) *Lawes v. Gibson*, L. R. 1 Eq. 135; 35 L. J. Ch. 148.

"Customary rent."

Plans—
necessity
for accu-
racy in.

The term "customary rent" means "a rent which entitles the occupier to hold so long as he pays" (*k*).

When a plan of the property to be sold is referred to in, or accompanies, the particulars, or is exhibited in the sale-room, it must be prepared with as much regard to accuracy as the particulars themselves; for, if the purchaser is misled by misdescriptions or omissions to show things which ought to have appeared, he may be entitled to compensation or rescission of the contract (*l*). Where a plan represented adjoining land so as to make it apparently part of the property, specific performance was refused to the vendor (*m*). And where an estate purported to be offered for sale in lots subject to restrictive covenants as to the trades to be carried on upon the estate, and a small plot which the vendor retained did not appear upon the plan as part of the estate, the Court refused to enforce the contract against the purchaser of one of the lots, unless the vendor entered into similar restrictive covenants as to the excepted lot (*n*). And so, where a plan omitted to show a right of way which existed over a lot offered for sale, the purchaser was held entitled to rescind the contract, although the existence of the right of way appeared in the lease, which was referred to in the particulars (*o*). Also, where the plan which accompanied the

(*k*) *Per Fry, J.*, in *Vivian v. Moat*, 16 Ch. D. 730, 733; 50 L. J. Ch. 331.

(*l*) *Pope v. Garland*, 4 Y. & C. 394, 404; 10 L. J. Ch. (Ex. Eq.) 92, where the plan omitted to show an objectionable projection of one house over another, the defect not being visible to the eye.

(*m*) *Denny v. Hancock*, L. R. 6 Ch. 1; cf. *Weston v. Bird*, 2 W. R. 145.

(*n*) *Baskcomb v. Beckwith*, L. R. 8 Eq. 100; 38 L. J. Ch. 536.

(*o*) *Dykes v. Blake*, 4 Bing. N. C. 463; 7 L. J. C. P. 282; 6 Scott, 320; 10 W. R. 665. But in *Wilde v. Gibson*, 1 H. L. C. 605; 12 Jur. 527, the House of Lords held that the omission to show on the plans a right of way which existed did not entitle the purchaser, in the absence of fraud, or proof that the vendor knew of its existence, to rescind the contract after conveyance executed. But see criticism on this case, Sugd. 328.

particulars of a farm showed that the vendor was apparently entitled to the whole of one of the parcels, whereas it afterwards appeared that he was only entitled to four-sevenths, the purchaser was held not bound to complete (*p*). Where the plan of property contained an outline of some common land adjoining, but not part of it, the purchaser was held entitled to resist specific performance, because, although the particulars made no mention of the piece of common land, yet the insertion of it in the plan caused an ambiguity which might have misled the purchaser (*q*).

But a plan which accurately represents the physical aspect of the property is merely tantamount to a view; so that, where an estate was sold in lots, and it correctly appeared by the plan that lot 1 was supplied with water by a drain leading from a well in lot 4, this was held not to amount to any engagement on the part of the vendor that there should be a reservation of a right to water in the conveyance of lot 4, and compensation was refused to the purchaser of lot 1 (*r*). So also on the sale of building ground, the exhibition, on the plan, of intended roads or other improvements on the adjacent land does not bind the vendor to make or execute such roads or improvements (*s*), nor entitle the purchaser to

Plan, when accurate, tantamount to view.

(*p*) *In re Arnold*, 14 Ch. D. 270.

(*q*) *Weston v. Bird*, 2 W. R. 145. The purchaser was, however, refused costs, on the ground that there was enough doubt to induce investigation.

(*r*) *Fewster v. Turner*, 6 Jur. 144; 11 L. J. Ch. 161. The propriety of this decision has been doubted; Sugd. 25.

(*s*) Dart, 121, and the following cases there cited: *Feoffees of Heriot's Hospital v. Gibson*, 2 Dow. 301; *Squire v. Campbell*, 1 My. & C. 459; 6 L. J. Ch. 41; *Nurse v. Lord Seymour*, 13 Beav. 254, 269; *Schreiber v. Creed*, 10 Sim. 9; 8 L. J. Ch. 346; but see *Beaumont v. Duke*, Jac. 422; *Nicholson v. Rose*, 4 De G. & J. 10; and it is doubtful whether a vendor who had put it out of his power to carry out the improvements shown on the plan could enforce specific performance, although the purchaser might not, perhaps, be able to rescind the agreement.

a grant of a right of way over such roads, except such as form the direct means of communication with the nearest highway (*t*) ; but a vendor would not be allowed to divide and appropriate the land in a different manner, so as to produce an occupancy and population entirely different from what there would probably have been, if the plan proposed at the sale had been adhered to (*u*).

Litho-
graphic
plans.

It is dangerous, when a lithographic plan is used, to introduce a scale of dimensions, as the paper upon which such plans are usually prepared is apt to shrink in an abnormal manner. It is better to rely upon the dimensions stated in the documents of title (*v*).

(*t*) *Randall v. Hall*, 4 De G. & S. 343. But it is doubtful whether a vendor refusing to grant a right of way could enforce specific performance ; *Dart*, 121.

(*u*) *Peacock v. Penson*, 11 Beav. 355 ; 18 L. J. Ch. 57.

(*v*) Some forms of particulars and catalogues are given *post*, pp. 293–306.

CHAPTER V.

CONDITIONS OF SALE.

I.—*General remarks upon conditions of sale.*

ALL sales by auction are made subject to certain conditions, express or implied, with reference to all or some of the following matters : the biddings, the payment of a deposit, the signing of a contract, the quantity or quality of the subject-matter of the sale, the title to be given by the vendor, the evidence of title, the completion of the purchase, misdescriptions in the particulars or catalogue, forfeiture of the deposit, and a resale of the property (a). As a rule,

Auctions generally under written conditions,

(a) In Scotland conditions of sale are called *articles of roup*, which are thus described in Bell's Dictionary, p. 76 : "Articles of roup are the conditions under which property is exposed to sale by auction. They refer generally to the nature of the right to be transferred, specify the titles by which the property is to be conveyed, regulate the manner of bidding, prescribe the rules by which offerers are to be preferred, and name a person to be *judge of the roup*, before whom the procedure takes place, and who is empowered to declare the purchaser. These articles are executed by the exposor on stamped paper, and when the day of sale arrives, they are read over in presence of the meeting at the place and time appointed for the sale. The subject being exposed to sale by an auctioneer, a minute of the offers is made, generally on the back of the articles, and signed by each offerer, and the highest offerer at the outrunning of a sand-glass is declared to be the purchaser by the judge of the roup. Minutes of the procedure are made and regularly signed and attested at the time of sale. These articles contain a clause of registration, by which the parties consent to a decree going out in terms of the conditions, under which they may be enforced by the diligence of the law. Besides the rules and conditions expressed in the written articles of roup there are implied rules binding on both parties. Thus, the exposor must bring the subject fairly to sale, and not attempt to raise the price by the assistance of a *whitebonnet*, or fictitious offerer ; and, on the other hand, there must be no combination among the offerers to suppress the natural ardour of competition amongst intending purchasers."

Articles of roup.

the conditions are reduced into writing or print, by or on behalf of the vendor (*b*).

adapted to
circum-
stances.

It is obvious that the conditions of sale will vary according to the nature of the property sold, the state of the title to the property, the character in which the vendor sells, and other circumstances.

Real estate.

Upon a sale of personal property, the preparation of the conditions of sale is rarely a matter of any great difficulty ; but upon sales of real estate, owing to the complexity of our system of tenures, the framing of the conditions often severely taxes the resources of the draftsman (*c*).

As to auc-
tioneer
drawing
conditions.

An auctioneer should never prepare conditions of sale of real estate : his doing so will expose him to great risk (*d*). On the other hand, he should be careful, in selling an estate by private treaty, to make his offer to sell, or his acceptance of an offer to purchase, conditional upon a formal contract to be prepared by the vendor's solicitor. If he omit to do this, the sale will be upon an open contract, and serious consequences are likely to ensue.

Obligation
of vendor
to make a
title.

In contracts for the sale of real estate an agreement to make a good title is always implied, unless that liability is expressly excluded (*e*).

(*b*) As to when writing is necessary, see *post*, Chapter VIII. It is said that where a sale is made public by statute the seller has no right to make any regulations in the conditions respecting the admissibility of persons to become buyers ; *Eagleton v. East India Company*, 3 B. & P. 55—Morton, V. & P. 155.

(*c*) This chapter consequently relates principally to real estate. Where personalty is included in any remark, the fact, unless obvious, will be found specially mentioned.

(*d*) *Denew v. Daverell*, 3 Camp. 451.

(*e*) *Deverell v. Lord Bolton*, 18 Ves. 505, 512 ; *Doe d. Gray v. Stanion*, 1 M. & W. 701 ; 2 Gale, 154 ; *Barnett v. Wheeler*, 7 M. & W. 364 ; *Worthington v. Warrington*, 5 C. B. 636 ; 18 L. J. C. P. 350 ; *Hoy v. Smithies*, 2 Jur. N. S. 1011 ; *Wells v. Cuttling*, 7 W. R. 448 ; *Blackford v. Kirkpatrick*, 6 Beav. 232. See *post*, p. 94, as to the purchaser's rights incidental to the vendor's obligation to make a title.

An intending vendor of real estate will, therefore, first examine his title, to see how far it can be safely subjected to adverse scrutiny; and then, if necessary, he will proceed to frame such conditions of sale as will properly protect his own interests without unduly alarming purchasers (*f*).

Investigation of title prior to sale.

If the title is known to be a good one, and there is nothing particularly complex about it, or if there are only such imperfections in the title, or difficulties in proving it, as the vendor thinks preferable to remove at his own expense, the conditions of sale may be short and simple. In these cases little more is necessary than to provide for the manner in which the biddings are to be conducted, the time when the purchase is to be completed, and the remedy of the vendor for a breach of the conditions.

When common conditions sufficient.

But when, as frequently happens, the title is either intricate or insecure, it will probably be expedient to introduce special provisions adapted to the exigencies of the case.

Special conditions, when necessary,

Special conditions of sale should always be drawn with great care, and strictly with reference to the particular circumstances of the property to be sold. No branch of the art of conveyancing calls for greater circumspection. Every point must be embraced which by any probability may afterwards arise; and as much discretion must be used in omitting unnecessary stipulations as in inserting proper ones.

should be sparingly used.

(*f*) See 2 Law Review, 81. The vendor should have a perfect abstract of his title prepared and carefully examined with the deeds in his possession, in which abstract all the facts—such as marriages, births and deaths—connected with his estate should be faithfully stated; and he should be well assured of his ability to produce all documents and verify all facts so stated; and he should then obtain the opinion of an experienced conveyancer upon the sufficiency of his title and upon the expediency of delivering a corresponding abstract, or of omitting any, and what, part, and also upon the necessity of providing in the particulars and conditions of sale against the production or proof of any document or other fact, so as to compel any purchaser to accept a conveyance without the same; and he is recommended to prepare such an abstract before advertising his particulars of sale; 1 Chit. Prac. 295.

Abstract of title.

Trustees
&c.

The use of depreciatory conditions (*i.e.* conditions calculated to damp the sale) by persons in a fiduciary capacity may not only involve the vendors in personal liability to their *cestuis que trust*, but may also constitute an objection to the title (*g*).

In the drawing of conditions the following rules must be observed :—

Conditions
should be
clearly
expressed.

1. The language of restrictive conditions should be perfectly clear (*h*). The vendor of real estate may oblige the purchaser to take a title which is absolutely defective (*i*); and the buyer of goods may be bound by a contract to take them with all their faults (*j*); but in such cases the intention of the parties must be expressed in no ambiguous terms.

They must
not be mis-
leading.

2. The language of the conditions must not be misleading (*k*). If, not confining himself to mere encomium, the vendor attributes to his property direct advantages which it does not possess, the purchaser will be discharged from his contract (*l*); or if a vendor holds out his property as free from inconveniences or incumbrances to which it is

(*g*) *Hobson v. Bell*, 2 Beav. 17; *Rede v. Oakes*, 4 De G. J. & Sm. 505; *Ord v. Noel*, 5 Madd. 438; *Dance v. Goldingham*, L. R. 8 Ch. 902; 42 L. J. Ch. 777; 1 Dav. 507. The act 44 & 45 Vict. c. 41, s. 35, now, however, provides that trustees in whom a trust for sale or power of sale is vested may, subject to the terms of the instrument creating the trust or power, sell "subject to any such conditions respecting title, or evidence of title, or other matter," as they think fit; cf. 37 & 38 Vict. c. 78, s. 8; and 23 & 24 Vict. c. 145, ss. 1, 2, 32.

(*h*) *Osborne v. Harvey*, 7 Jur. 229; *Brownlie v. Campbell*, 5 App. Cas. 925.

(*i*) *Freme v. Wright*, 4 Madd. 364; *Hume v. Pocock*, L. R. 1 Ch. 379; 35 L. J. Ch. 731; cf. *Wilmot v. Wilkinson*, 6 B. & C. 506; 9 D. & R. 620; *Hanks v. Pulling*, 25 L. J. Q. B. 375.

(*j*) Cf. *ante*, pp. 59, 60. Such a condition is very commonly introduced into contracts for the sale of ships; *MacLachl.* 13; cf. *Shepherd v. Kain*, 5 B. & Ald. 240; and *Taylor v. Bullen*, 5 Ex. 779; 20 L. J. Ex. 21.

(*k*) *Else v. Else*, L. R. 13 Eq. 196; 41 L. J. Ch. 213; *Blenkhorn v. Penrose*, 29 W. R. 237.

(*l*) *Lachlan v. Reynolds*, Kay, 52.

in fact subject, the Court will not decree him specific performance (*m*). A condition of sale is bad, as misleading, if it states that the state of the title is not accurately known, when, in fact, it is well known to the vendor; or if it requires the purchaser to assume what the vendor knows to be false (*n*).

3. Sweeping general clauses in the conditions cannot be relied upon to cure the omission from the particulars or conditions of anything which ought to have been stated there (*o*). "A vendor," says Mr. Davidson, "will usually find it more politic, as it certainly is more honest, to state plainly in the conditions any defect of which he may be aware in his title, and to stipulate that it shall not be made an objection, than to endeavour to disarm suspicion by the concise simplicity of a general condition, throwing on the purchaser the risk, as well as the expense, of removing the defect, should he discover it (*p*)."

When a vendor, taking advantage of his position as the framer of his own conditions of sale, introduces stipulations the object of which is to exclude the purchaser from his common right and impose an estate upon him devoid of that which is essential to its enjoyment, the courts always construe such stipulations strictly in favour of the purchaser and take every opportunity of discouraging them and remitting the purchaser to his ordinary rights as derived from an unconditional contract (*q*). On the other hand, the purchaser will not be allowed to take undue advantage of the omission of special conditions; and even a stipulation that the vendor

As to
general
clauses.

Restrictive
conditions
construed
against
vendor.

(*m*) *Drysdale v. Mace*, 2 Sm. & G. 225.

(*n*) *In re Banister*, 12 Ch. D. 131.

(*o*) *Edwards v. Wickwar*, L. R. 1 Eq. 68.

(*p*) 1 Dav. 510; cf. Dart, 176.

(*q*) *Southby v. Hutt*, 2 My. & Cr. 207; *Symons v. James*, 1 Y. & C. C. 487, 490; 6 Jur. 452; *Morley v. Cook*, 2 Hare, 106, 115; *Beioley v. Carter*, L. R. 4 Ch. 230; 38 L. J. Ch. 283; 20 L. T. N. S. 381.

will give such title as shall be satisfactory to the purchaser has been held not to justify the purchaser in making other than usual objections to title (*r*).

In general, it may be said that conditions of sale are subject to the rules and principles, so far as applicable, by which particulars are governed (*s*).

Conditions usually printed with particulars or catalogue. They should be circulated before sale,

The conditions are usually printed together with the particulars or catalogue (*t*). They should, as far as practicable, be circulated some time previously to the sale, so as to give every one an opportunity of ascertaining the terms on which the property is sold (*u*). The system of having printed common form conditions which are used on every sale, and to which are prefixed the special conditions under which the particular property is sold, is recommended by Mr. Dart, as at once directing the attention of the purchaser and his solicitor to the special restrictive conditions (*v*).

and read out or mentioned at the sale ;

The auctioneer sometimes reads out the conditions immediately before putting up the property for sale ; but more commonly, where they have been circulated beforehand, he merely proposes that they be taken as read. A purchaser will not be bound by conditions of which he had not either actual or constructive notice (*w*).

or, where usual conditions of

On sales of furniture &c. it is not unusual to paste up the conditions in the auction-room ; and where such is the

(*r*) *Lord v. Stephen*, 1 Y. & C. 222 ; cf. *Lewis v. Lechmere*, 10 Mod. 502.

(*s*) See Ch. IV., *ante*, *passim*.

(*t*) See *ante*, p. 47. It is advisable that the conditions of sale should be actually annexed to the particulars or catalogue, or be clearly referred to in them, otherwise it will be difficult to connect them so as to charge the purchaser ; *Morton*, V. & P. 154.

Torrance v. Bolton.

(*u*) See *Torrance v. Bolton*, L. R. 14 Eq. 124 ; 41 L. J. Ch. 648 ; aff. L. R. 8 Ch. 118 ; 42 L. J. Ch. 177 ; where *Malins*, V.-C., strongly reprobated the practice of advertising properties to be sold under conditions to be produced at the auction.

(*v*) See *Dart*, 124.

(*w*) *Freme v. Wright*, 4 Madd. 364 ; cf. *Dart*, 175.

custom, and the auctioneer announces that the conditions of sale are as usual, they may bind the purchaser, whether he sees them or not (*x*). But see *post*, Chapter VIII.

The conditions are embodied, with the particulars, in the formal contract (*y*). It seems that the signature of the purchaser, by himself or his agent, on the back of the particulars and conditions of sale, with the sum opposite to it, is a sufficient compliance with the requirements of the Statute of Frauds, where the paper on which the indorsement is made contains the name, or a sufficient description, of the seller (*z*). But the usual and correct mode of concluding an auction sale is for the vendor, or the auctioneer, as his agent, and the purchaser, or his agent, to sign a proper memorandum of purchase, annexed to the particulars and conditions (*a*).

As the written conditions cannot, in general, be varied, or even explained, by the verbal declarations of the auctioneer at the time of sale (*b*), any alteration in them should be made in writing before the signing of the contract (*c*).

For precedents and forms of conditions of sale, see *post*, pp. 306-342.

(*x*) *Mesnard v. Aldridge*, 3 Esp. 271; and the same rule is applicable to a sale by private contract in a public repository where the rules are painted on a board affixed to the wall; *Bywater v. Richardson*, 1 A. & E. 508; 3 N. & M. 748. Cf. *Cowley v. Watts*, 22 L. J. Ch. 591; 17 Jur. 172. In a Scotch case (*Laing v. Hain*, 2 S. M. & P. 396) an opinion was expressed that a purchaser at a public auction could not be allowed to plead that he was ignorant of the articles and conditions of sale.

(*y*) See *ante*, p. 47.

(*z*) Sugd. 144.

(*a*) See *post*, Chapter VI.; and forms, pp. 342, 344.

(*b*) *Goss v. Lord Nugent*, 5 B. & Ad. 58; 2 N. & M. 28; see also *Parteriche v. Poulet*, 2 Atk. 383; and cf. *ante*, pp. 45, 46. As to a previous arrangement overriding the conditions of sale, see *Bartlett v. Purnell*, 4 A. & E. 792; 6 N. & M. 299; 2 H. & W. 19; cf. *ante*, p. 23; *Page v. Cowasjee Eduljee*, L. R. 1 P. C. 127.

(*c*) See also the observations on pp. 55-6, *ante*; and Dart, 112.

II.—*Remarks upon the different classes of conditions of sale.*

Classifica-
tion of
conditions.

Conditions of sale may be divided into the following classes : 1. conditions relating to the actual sale : biddings, payment of a deposit and signing of a contract ; 2. conditions relating to the *quantum* of interest sold ; 3. conditions relating to the title to the property ; 4. conditions relating to completion of the purchase ; 5. conditions relating to misdescriptions in the particulars ; and 6. conditions relating to forfeiture of the deposit and a resale of the property.

1. *Conditions relating to the actual sale : biddings, payment of deposit, and signing of contract.*

Biddings.

The biddings are generally regulated by conditions providing that the highest bidder shall be the purchaser, that no person shall advance less than a given sum at one time, that no bidding shall be retracted (*d*), and that, in case of dispute respecting a bidding, the property shall be put up again. If the vendor is to bid, either himself or by an agent, the right must be expressly reserved ; or if the property is offered for sale subject to a reserved price, the fact must be expressly stated (*e*). Where the vendor reserved a right to bid once, and the auctioneer, with his sanction, bid thrice, the sale was held voidable at the option of the purchaser (*f*) ;

Reserved
bidding ;
reserved
price.

(*d*) As to whether this condition could be enforced, see *ante*, p. 30. See also, for a less usual condition relating to the biddings, *post*, p. 330, form 1.

(*e*) Cf. *ante*, p. 48 ; *post*, Chapter VII. ; Dart, 125. If there is a reserve, the fact is generally stated in the conditions ; if there is no reserve, or only a very low reserve, in the particulars.

(*f*) *Parfitt v. Jepson*, 46 L. J. C. P. 529 ; 36 L. T. N. S. 251. It seems that a vendor's right to bid once would be exercised by the auctioneer starting the property at a price or by the vendor (or auctioneer) naming a reserve ; see the judgment of Grove, J., *ib*.

and under conditions stating that the sale is "subject to a reserved bidding," it is illegal to employ a person to bid up to the reserved price, unless the right to do so is expressly stipulated for (*g*).

On sales by the Court a reserved bidding for each lot is fixed by the judge or his chief clerk; a sale by auction on behalf of an infant, without a reserved bidding, has been strongly condemned (*h*). Trustees, it seems, may fix a reserved bidding without being specially authorized (*i*).

It is usually provided that the purchaser shall, immediately after the sale, pay a deposit on the purchase-money (*j*), and, in the case of real estate, sign an agreement to complete the purchase.

The deposit is commonly made payable, in London, to the auctioneer; but in the country, upon sales of estates, to the vendor's solicitor. If the deposit will be large, it may be well to provide for its investment until completion. Exchange bills are most frequently chosen for the purpose, as being subject to but slight fluctuations in value (*k*).

The better practice is to annex a memorandum of agreement to a copy of the printed particulars and conditions (*l*).

2. Conditions relating to the QUANTUM of interest sold.

If land used for agricultural purposes is in lease at the time when it is sold, the sale, unless provision be made to the contrary, will be subject to the rights of the tenants with respect to growing crops, seed, manure, tillage and,

(*g*) *Gilliat v. Gilliat*, L. R. 9 Eq. 60; 39 L. J. Ch. 142.

(*h*) *Cutts v. Salmon*, 16 Jur. 623.

(*i*) Dart, 79.

(*j*) As to the deposit generally, see Chapter IX., *post*.

(*k*) 1 Dav. 522.

(*l*) See *post*, p. 128, and forms, pp. 342, 344.

generally, such things as, according to local custom, are matters for allowance between outgoing and incoming tenant; if it is in hand, and nothing is said as to these items, the crops will belong to the purchaser from the day fixed for completion, and he will not be obliged to allow the vendor anything for seed &c. (m). The vendor will often find it desirable to employ a condition restricting the purchaser's rights in these respects (n).

Timber. Timber passes, without express mention, with the land on which it stands; if the purchaser is to pay for it separately, the conditions must say so (o). A lessee, it may be observed, is seldom entitled to the timber or trees on his tenement; but the underwood frequently belongs to him (p).

Lessee's interest in timber.

Fixtures; Fixtures (q) would probably be held to be included in a contract for the sale of the land to which they are affixed (r), unless a contrary intention could be collected from the instrument (s). They should, therefore, be made the subject of an express condition, if the purchaser is to pay for them in addition to the amount of purchase-money bid by him at the sale. On a sale of leaseholds the conditions should specify that only tenant's (or house) fixtures will be

on sale of leaseholds.

(m) Dart, 132.

(n) Barns, stackyards &c. are frequently reserved for the vendor's use until the following spring, for the purpose of threshing corn &c.

(o) *Higginson v. Clowes*, 15 Ves. 516. As to copyholds, see *Cross v. Keane*, 9 Hare, 469. Cf. *ante*, p. 41. As to what is timber, see *ante*, p. 66; cf. *Chandos (Duke of) v. Talbot*, 2 P. W. 601; *Aubrey v. Fisher*, 10 East, 446; and *Lord Fitzhardinge v. Pritchett*, L. R. 2 Q. B. 135, as to saleable underwoods.

(p) 1 Dav. 522.

(q) As to what are fixtures, see Woodf. 594; cf. *Ex parte Quincey*, 1 Atk. 478; *Lawton v. Lawton*, 3 Atk. 16, note.

(r) See *Colegrave v. Dias Santos*, 2 B. & C. 76; 3 D. & R. 255; *Ex parte Lloyd*, 1 Mont. & Ayr. 494; *Longstaff v. Meagoe*, 2 A. & E. 167; 4 N. & M. 211; *Hitchman v. Walton*, 4 M. & W. 409; 1 H. & H. 374; *Ex parte Bentley*, 2 Mont. D. & De G. 591; *Ex parte Cotton*, *ib.* 725; cf. *Vale of Neath Colliery Co. v. Furness*, 45 L. J. Ch. 276.

(s) *Hare v. Horton*, 5 B. & Ad. 715; 2 N. & M. 428.

sold, and should provide a means of determining what are **and what** are not to be such fixtures (f).

It is ordinarily stipulated that the amount to be paid for **crops, timber and fixtures** shall be settled by valuation, and **that** the sum so ascertained shall bear interest as from the **time** fixed for completion. When the valuation is to be made in a specified manner, it is a condition precedent, and, if it fails, the purchaser cannot be compelled to submit to a valuation by the Court, or to any other terms; but the case of an agreement to sell "at a fair valuation" is essentially different: in that case, no particular means of ascertaining the value is pointed out, and there is nothing, therefore, to preclude the Court from adopting any means adapted to the purpose (u).

Price of crops &c., timber and fixtures, how ascertained.

"Fair valuation."

A condition is commonly inserted that the property shall be taken subject to all rents and rights of way and water, and other easements, if any, charged or subsisting upon it; but such a condition does not relieve the vendor of his obligation to disclose such liabilities, where known to exist (v).

Easements &c.

The conditions should state in what manner it is proposed to deal with any incumbrances subject to which the property is sold (w). It will often be expedient to provide that the purchaser shall take an indemnity (x). In such a case the conditions should be explicit as to its terms. If an

Incumbrances that cannot be discharged.

(f) Cf. 1 Dav. 522.

(u) *Leake*, 1185; see also *Cumberland v. (Bowes or) Glamis*, 15 C. B. 348; 3 C. L. R. 149; 24 L. J. C. P. 46; 1 Jur. N. S. 236; *Vickers v. Vickers*, L. R. 4 Eq. 429; 36 L. J. Ch. 946; *Dinham v. Bradford*, L. R. 5 Ch. 519; *Richardson v. Smith*, L. R. 5 Ch. 648; 39 L. J. Ch. 877; *Smith v. Peters*, L. R. 20 Eq. 510; 44 L. J. Ch. 613.

(v) *Dart*, 156; cf. *Gale v. Squier*, 5 Ch. D. 625; 46 L. J. Ch. 672.

(w) The mere fact of there being incumbrances is no objection to the title, if the vendor can require them to be paid off; *Sidebottom v. Bar- rington*, 4 Beav. 110. See now 44 & 45 Vict. c. 41, s. 5.

(x) See *Bainbridge v. Kinnaird*, 32 Beav. 346.

incumbrance is not likely to be enforced, it may be sufficient to preclude the purchaser from making any objection in respect of it.

Apportion-
ment of
rent
charge ;

Where land is sold in lots subject to a rent charge, it is usual to stipulate that each purchaser shall pay an amount apportioned to his lot in the particulars and shall procure an apportionment, if he desires one, at his own expense (y).

—of rent
service ;

When the reversion of land in lease is being sold in lots, or the reversion of part only of such land is being sold, the consent of the tenant to an apportionment of the rent should be obtained, or the conditions should provide for such apportionment (z).

—of rent
and liabili-
ties of
leasehold.

Upon the sale of a leasehold in lots the rents and liabilities under the lease will have to be apportioned. This is done, sometimes by means of cross powers of distress and entry ; sometimes by an assignment of the lease to the largest purchaser in value, he granting under-leases, with mutual covenants for indemnity, to the other purchasers (a).

3. *Conditions relating to the title to the property.*

General
obligations
of vendor
as to title.

In the absence of stipulation, a vendor of real estate is bound to deduce and verify a title extending over at least the forty years preceding the day of sale ; and this obligation involves the delivery to the purchaser of an abstract of title covering that period, the production of all the deeds and documents stated in the abstract, the identification of the property described in the particulars with the property described in the several instruments of title, and the strict

(y) Dart, 180. It is not unusual, upon a sale in lots, for the vendor to reserve power to withdraw lots, should the principal or any described lot or lots not be sold.

(z) *Ib.* 131.

(a) *Ibid.* and 171. As to building estate, see *ib.* 175.

proof of all facts and matters forming a link in the chain of title, except such as are stated or recited in any document twenty years old, in which case the statement or recital is sufficient *prima facie* evidence of their truth (b).

When it is inconvenient to give a forty years' title, for instance, by reason of part of the title being wanting, a condition will be employed providing that the abstract shall commence with a deed of more recent date. Sales of small properties with a thirty years' title, or even considerably less, are far from uncommon. If the vendor's title is positively defective, it will be desirable, either to state the defect in the conditions and stipulate that no objection shall be made in respect of it (c), or, sometimes, to refer the purchaser to the documents of title and provide that he shall take such title as they disclose, or, perhaps, to offer the property for sale with only such title as the vendor may have (d).

A condition merely debarring the purchaser from requiring the production of the title anterior to a certain period does not preclude him from seeking out *aliunde* and showing an actual defect in the anterior title (e).

(b) 1 Prid. 1. Unless there be a condition to the contrary, the abstract must go back, in the case of an advowson, at least 100 years, and in the case of a reversionary interest, to its creation; Dart, 293, 294; and the creation of a long leasehold must be shewn; *Frend v. Buckley*, L. R. 5 Q. B. 213. Advowsons &c.

(c) *Sellick v. Trevor*, 11 M. & W. 722; 12 L. J. Ex. 401; cf. *Smith v. Robinson*, 13 Ch. D. 148; 49 L. J. Ch. 20; 44 & 45 Vict. c. 41, s. 3, sub-a. 3.

(d) *Smith v. Watts*, 4 Drew. 338; *Keyse v. Heyden*, 20 L. T. O. S. 244; *Freme v. Wright*, 4 Madd. 364; *Wilmot v. Wilkinson*, 6 B. & C. 506; 9 D. & R. 620; *Spratt v. Jeffery*, 10 B. & C. 249; 5 Man. & R. 188; *Hume v. Pocock*, L. R. 1 Ch. 379; cf. *Duke v. Barnett*, 2 Coll. C. C. 337; *Johnson v. Smiley*, 17 Beav. 233.

(e) *Shepherd v. Keatley*, 1 C. M. & R. 117; 4 Tyrw. 571; *Southby v. Hutt*, 2 My. & C. 207; cf. *Edwards v. M'Leay*, 2 Swans. 287; *Coop. 308*; *Hyde v. Dallaway*, 4 Beav. 606; 6 Jur. 119; *Dick v. Donald*, 1 Bli. N. S. 655; *Sellick v. Trevor*, 11 M. & W. 722; 12 L. J.

*Bolton v.
London
School
Board.*

Under the Vendor and Purchaser Act, 1874 (*f*), a recital in a conveyance more than twenty years old that **the** vendor was seised in fee simple is sufficient evidence of **the** fact, and no prior abstract of title can be demanded, **except** so far as the recital is proved to be inaccurate; and in **such** cases a forty years' title is not required (*g*).

Enfranchised
copyholds.

Subject to any stipulation to the contrary, where land of copyhold or customary tenure has been converted into freehold by enfranchisement, there, under a contract to sell and convey the freehold, the purchaser has no right to call for

Leaseholds.

the title to make the enfranchisement (*h*); under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign is not entitled to call for the title to the freehold (*i*); and under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign has no right to call for the title to the leasehold reversion (*j*).

Under-
lease.

Renewable
leaseholds.

Upon the sale of renewable leaseholds it will probably be

Ex. 401; *Rhodes v. Ibbetson*, 4 De G. M. & G. 787; 23 L. J. Ch. 459; *Waddell v. Wolfe*, L. R. 9 Q. B. 515; 43 L. J. Q. B. 138; *Jones v. Clifford*, 3 Ch. D. 779; 45 L. J. Ch. 809; 24 W. R. 979. See now 44 & 45 Vict. c. 41, s. 3, sub-s. 3.

(*f*) 37 & 38 Vict. c. 78, s. 2.

(*g*) *Bolton v. London School Board*, 7 Ch. D. 766; 47 L. J. Ch. 461; cf. *Best v. Hamand*, 12 Ch. D. 1; 48 L. J. Ch. 503.

(*h*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 2. The section only applies to sales made after 31 December, 1881; *ib.* sub-s. 10.

Lessee has
notice of
lessor's
title.

(*i*) 37 & 38 Vict. c. 78, s. 2, rule 1. The section does not alter the rule that a lessee has constructive notice of his lessor's title; *Patman v. Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; nor does it supersede the necessity for the usual condition that the lessor's title shall not be inquired into, and no objection shall be made in respect of it; see *Hume v. Bentley*, 5 De G. & Sm. 520. As to bishop's leases, see *Fane v. Spencer*, 2 Madd. 438; and Dart, 290.

(*j*) 44 & 45 Vict. c. 41, s. 3, sub-s. 1. A leaseholder undertaking to grant an underlease still impliedly promises that he has a good title to let; *Stranks v. St. John*, L. R. 2 C. P. 376; 36 L. R. C. P. 118.

necessary to provide against the production of the title prior to the subsisting lease (*k*).

Upon a sale of property held under a grant from the Crown, *e. g.* tithes, the vendor should protect himself against being required to produce the original grant, if it is not in his possession (*l*). Property held under grant from Crown.

Subject to the conditions, where the estate sold has been taken in exchange at common law, the vendor must show the titles, down to the exchange, to both estates (*m*); but if it has been taken in exchange from the Church or under an inclosure act, he will only have to show, down to the exchange, the title to the land given in exchange (*n*). Exchanges.

Upon a sale of lands held under an inclosure act (*o*), it will often be expedient to negative the purchaser's *prima facie* right to evidence of the validity of the award; and attention must be paid to the rule that, when an allotment has been made in respect of lands held under different titles, all such titles must be produced and proved (*p*). Allotments.

If the title to any part of the property commences with a grant of waste by the lord of the manor, the purchaser should be precluded from requiring evidence of the lord's right to make grants of waste; and, similarly, if a strip of the land sold has been inclosed from the high road, the vendor should protect himself by a stipulation against having to produce evidence of prior title to such inclosure. Lands formerly waste, and encroachments.

On a sale in lots, a purchaser of two or more lots held wholly or partly under the same title has only a right to one abstract of the common title, except at his own expense (*q*). Right to abstract on sale in lots.

(*k*) Dart, 171.

(*l*) *Ib.*, 166, 295, 353-6.

(*m*) *Bustard's Case*, 4 Rep. 121; Sugd. 372.

(*n*) Dart, 287.

(*o*) Except 6 & 7 Will. IV. c. 115, and 3 & 4 Vict. c. 81.

(*p*) Dart, 164, referring to 1 Dav. 462.

(*q*) 44 & 45 Vict. c. 41, s. 3, sub-s. 7.

As to fixing time for delivery of abstract.

A day for the delivery of the abstract is usually fixed by the conditions ; but the conditions should not provide for the vendor delivering an abstract by a given day, if it is doubtful whether he will be able to do so ; for, if he fail to deliver an abstract within the period appointed, or if the abstract delivered be very imperfect, any condition binding the purchaser to make his objections within a specified time will fail of effect (*r*).

Condition as to requisitions and objections ;

as to rescission upon objections.

It is a common condition that the purchaser shall make all requisitions upon, and objections to, the title within a given time from the delivery of the abstract (*s*), and that all objections not made within that time shall be considered to have been waived. It is usual, also, to enable the vendor to rescind the sale, notwithstanding any intermediate negotiations (*t*), if any objection or requisition shall be made and insisted upon which he shall be unable or unwilling to remove or comply with. But the vendor must honestly endeavour to answer all reasonable requisitions, and must give the purchaser an opportunity of waiving such objections as cannot be removed, and of accepting such title as he (the vendor) can give (*u*).

37 & 38
Vict. c. 78,
s. 9.

A useful provision contained in the Vendor and Purchaser Act, 1874, now enables a vendor or purchaser to obtain a summary decision of a judge in chambers upon any question

(*r*) See Dart, 125.

(*s*) I.e. a perfect abstract ; *Hobson v. Bell*, 2 Beav. 17 ; *Oakden v. Pike*, 11 Jur. N. S. 666.

(*t*) See *Morley v. Cook*, 2 Hare, 106 ; cf. *Gardom v. Lee*, 3 H. & C. 651 ; 34 L. J. Ex. 113 ; *Gray v. Fowler*, L. R. 8 Ex. 249 ; 42 L. J. Ex. 161.

(*u*) *Duddell v. Simpson*, L. R. 2 Ch. 102 ; 36 L. J. Ch. 70 ; *Mawson v. Fletcher*, L. R. 6 Ch. 91 ; 40 L. J. Ch. 131 ; cf. *Powell v. Powell*, L. R. 19 Eq. 422 ; 44 L. J. Ch. 311 ; *Bowman v. Hyland*, 8 Ch. D. 588 ; 47 L. J. Ch. 581 ; *Jackson v. Oakshott*, 14 Ch. D. 851 ; 49 L. J. Ch. 523.

arising out of requisitions, objections, claims for compensation, and the like (v).

Unless he stipulate to the contrary, the vendor is bound to produce, for verification of the abstract, all deeds and documents relating to the title to the property sold, whether they are in his possession or not (w); and he must produce the originals, and not merely attested copies, except in the case of copies of court roll and instruments upon record (such as wills and enrolled deeds) and documents that are lost or have been destroyed (x); but the purchaser cannot require the production, or any abstract or copy, of any deed, will or other document dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to him; nor can he require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, covenanted to be produced, or noticed (y).

Production of deeds and documents. The originals must be produced. Exceptions.

Limit.

It has been held that a condition that the vendor shall not be bound to produce any original deed or other document not in his possession does not relieve him of his obligation to verify the abstract; for he may be able to prove his title in some other way (z).

Effect of condition against production of originals.

If and so far as a contrary intention is not expressed in the contract of sale, the expenses of the production and

Expense of production of in-

(v) 37 & 38 Vict. c. 78, s. 9.

(w) *Southby v. Hutt*, 2 My. & Cr. 207.

(x) See Dart, 142.

(y) 44 & 45 Vict. c. 41, s. 3, sub-s. 3.

(z) *Southby v. Hutt*, 2 My. & Cr. 207; *Osborne v. Harvey*, 7 Jur. 229.

struments not in vendor's possession; inspection of all acts of parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying and producing all certificates, declarations, evidences and information not in the vendor's possession and all attested, stamped, office or other copies or abstracts of, or extracts from, any acts of parliament "or other documents aforesaid," not in the vendor's possession, if any such production, inspection, journey, search, procuring, making or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, are borne by the purchaser who requires the same (a).

of those in his possession. The expenses to which the purchaser may be put for journeys &c., in verification of the abstract, by reason of the deeds in the vendor's possession not being produced at one of the usual places for production (b) must, in the absence of a special condition, be borne by the vendor (c).

Expense of verifying abstract on sale in lots. On a sale in lots, either the vendor should verify the abstract at his own expense, or the expense of verification should be divided among the purchasers in some specified proportion; otherwise the purchaser who first calls for evidence may be at the sole cost of procuring it (d).

Identification of parcels. Where a condition provided that the purchaser should not require any further proof of identity than was furnished by the title-deeds themselves, it was held that the contract was that the deeds should show identity, so that, if they did not, a good title was not made (e).

(a) 44 & 45 Vict. c. 41, s. 3, sub-s. 6.

(b) I.e. at the vendor's residence or in London.

(c) *Hughes v. Wynne*, 8 Sim. 85.

(d) *Dart*, 155.

(e) *Curling v. Austin*, 2 Drew. & Sm. 129; cf. *Flower v. Hartopp*,

Facts stated in the conditions of sale as the ground of the conditions must be proved, unless this is precluded (*f*). Proof of facts, &c.

Although a purchaser may be bound by the conditions to accept certain specified evidence as sufficient proof of a material fact, he may yet require to be satisfied that the vendor has no better evidence in his possession, and may, it would seem, insist on a statutory declaration to that effect (*g*). Purchaser's right to best evidence.

The Vendor and Purchaser Act, 1874, makes recitals, statements and descriptions of facts, matters and parties, contained in deeds, instruments, acts of parliament or statutory declarations twenty years old at the date of the contract, unless, and except so far as, they shall be proved to be inaccurate, sufficient evidence of the truth of such facts, matters and descriptions (*h*); and now, by the Conveyancing and Law of Property Act, 1881, a purchaser of any property must assume, unless the contrary appears, that the recitals contained in the abstracted instruments, of any deed, will or other document forming part of the "prior title" (*i*), are correct and give all the material contents of the deed, will or other document so recited, and that every document so recited was duly executed by all necessary parties and perfected, if, and as, required, by fine, recovery, acknowledgment, enrolment or otherwise (*j*). It may, however, be safer to employ the more comprehensive Recitals, &c., in documents twenty years old, or forming part of prior title. Condition still desirable.

6 Beav. 476; 7 Jur. 613. As to lands of different tenures: *Monro v. Taylor*, 8 Hare, 51; *Dawson v. Brinckmann*, 3 Mac. & G. 53; 3 De G. & Sm. 385; *Cross v. Lawrence*, 9 Hare, 462; vague description of copyholds: *Long v. Collier*, 4 Russ. 267. If the evidence of identity is very slender, the reference should be to the identity, if any.

(*f*) *Symons v. James*, 1 Y. & C. C. C. 487.

(*g*) *Dart*, 152.

(*h*) 37 & 38 Vict. c. 78, s. 2, r. 2.

(*i*) *I.e.* the title prior to the time prescribed by law, or stipulated, for the commencement of the title.

(*j*) 44 & 45 Vict. c. 41, s. 3, sub-s. 3.

words of the usual condition that recitals &c. shall be conclusive evidence of everything stated, noticed, assumed or implied therein.

Leases presumed valid.

Where land sold is held by lease (not including underlease), the purchaser must assume, unless the contrary appears, that the lease was duly granted; and, on production of the

Last receipt for rent.

receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he must assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase (*k*).

Under-leases presumed valid.

Where land sold is held by under-lease, the purchaser must assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on

Last receipt for rent.

production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he must assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease and all the covenants and provisions of every superior lease have been paid and duly performed and observed up to that date (*l*).

As to leases for lives.

On the sale of an estate for lives the vendor is expected to prove the existence and ages of the *cestuis que vie*.

Statutory declarations.

Where the evidence of some fact upon which the title depends is insufficient, and there is no better means of verification, it is frequently provided that the purchaser shall

(*k*) 44 & 45 Vict. c. 41, s. 3, sub-s. 4; cf. *Howell v. Kightley*, 21 Beav. 331; *Lawrie v. Lees*, 7 App. Cas. 19; 49 L. J. Ch. 636; 30 W. R. 185; *Ringer to Thompson*, W. N., 1881, 133; aff. W. N. 1882, 21.

(*l*) *Ib.* sub-s. 5.

be satisfied with a statutory declaration confirmative of the title on the point on which it is defective (*m*).

4. *Conditions relating to the completion of the purchase.*

The conditions should fix the day upon which the purchase is to be completed. Whether time is of the essence of a contract will depend upon whether the parties appear to have intended it to be so (*n*). Time for completion.

It is unnecessary, although usual, to provide that the vendor shall, upon payment of the purchase-money, execute a proper conveyance, to be prepared by and at the expense of the purchaser, and by him tendered for execution at a specified time and place: the contract implies thus much (*o*). It is very properly the practice to stipulate that a draft of the proposed conveyance shall, at some time before the day fixed for completion, be furnished for the perusal of the vendor's solicitor. Conveyance.

A condition that the purchaser shall have a proper conveyance at his own expense does not throw upon him the expense of procuring the concurrence of necessary parties (*p*). Expense of concurrence of outside parties.

It is usual to provide that the purchaser shall be at the expense of getting in and procuring the surrender or release of any outstanding legal estate or term (*q*). Outstanding terms &c.

When the sale is by trustees or mortgagees, or other Sale by trustees.

(*m*) Dart, 148.

(*n*) *Patrick v. Milner*, 2 C. P. D. 342; 46 L. J. Q. B. 537; and see *Noble v. Edwards*, 5 Ch. D. 379. It may be made so by notice; *Crawford v. Toogood*, 13 Ch. D. 153; 49 L. J. Ch. 108; *Green v. Savin*, 18 Ch. D. 589; 49 L. J. Ch. 166; Jud. Act, 1873, s. 25, sub-s. 7.

(*o*) *Poole v. Hill*, 6 M. & W. 835; 9 D. P. C. 300.

(*p*) *Paramore v. Greenslade*, 1 Sm. & G. 541.

(*q*) See Dart, 156; *Stronge v. Hawkes*, 2 Jur. N. S. 388.

persons who do not enter into the usual covenants for title, the fact should be mentioned in the conditions.

Interest.

Receipt of
rents and
profits.

When the purchase is not completed on the day fixed by the conditions, the general rule, in the absence of stipulation, is, that the purchaser must pay interest on the unpaid part of his purchase-money, and may take the profits of the estate from the day on which the purchase ought to have been completed, the vendor being liable for the outgoings up to that time; but this rule has been so much modified by successive cases (*r*) that it has become the almost universal practice to insert a stipulation that the purchaser shall pay interest, if, from any cause whatever, the purchase shall be delayed beyond the appointed day (*s*). Under such a condition interest will be payable, although the delay which occurs is caused by the state of the title; but not if it is caused by the misconduct of the vendor (*t*).

Interest,
where abstract
delivered
late.

If, where days are fixed for the delivery of the abstract and the completion of the purchase, the vendor fails to deliver a sufficient abstract until after the appointed time, interest will only begin to run from the expiration of such a period after the delivery of the abstract as by the contract for sale was allowed between the day fixed for

(*r*) *Wilson v. Clapham*, 1 J. & W. 36; *Winter v. Blades*, 2 Sim. & Stu. 395; *Dyson v. Hornby*, 4 De G. & Sm. 481; *Acland v. Gaisford*, 2 Madd. 28; *Regent's Canal Co. v. Ware*, 23 Beav. 575; 1 Dav. 572 *et seq.*; Sugd. 627-8.

(*s*) 1 Dav. 577. Interest may be reserved at an increasing rate; *Herbert v. Salisbury & Yeovil Ry. Co.*, L. R. 2 Eq. 221. The condition generally proceeds to provide for the purchaser having possession or being let into the receipt of the rents and profits and for the clearing of the outgoings. "Possession" does not necessarily import a personal occupation; *Lake v. Dean*, 28 Beav. 607. "Rents and profits" include a fair occupation rent; *Metropolitan Ry. Co. v. Defries*, 2 Q. B. D. 387. See Dart, 128-9.

(*t*) *Williams v. Glenton*, L. R. 1 Ch. 200; 35 L. J. Ch. 284. See also Mr. Dart's observations on *De Visme v. De Visme*, 1 Mac. & G. 336; V. & P. 127-8.

delivering the abstract and that fixed for completing the purchase (*u*).

If the property consist of an annuity or rent charge for life, it will be proper to state whether the sale is to be affected by the death of the annuitant before the completion of the purchase (*v*). Sale of annuity.

Generally speaking, the property is at the purchaser's risk as from the time of sale; he should, therefore, insure it immediately afterwards (*w*). But, if there be no stipulation providing for accident, a purchaser is not bound to accept the title, when the title-deeds have been destroyed by fire, although after they had been examined with the abstract (*x*). Property at purchaser's risk after sale.

Goods were sold by auction subject to the condition "the lots to be cleared away within three days;" it was held that this was not a condition precedent to the buyer's right to claim delivery, and that a default of the buyer in clearing the lots bought, although a breach of the condition, and although it might justify a resale against the buyer under an express condition to that effect, did not alone deprive him of his right to claim the goods (*y*). Condition as to clearing goods.

Upon the completion of the purchase the vendor is bound to deliver to the purchaser the documents of title in his possession which do not also relate to other property of his, and attested copies of those which he does not hand over (except copies of court roll and instruments of record), and to cove- Purchaser's right to title-deeds of estate or their production.

(*u*) *Sherwin v. Shakspear*, 2 Eq. Rep. 957; 5 De G. M. & G. 517; 1 Dav. 456.

(*v*) In *Kenney v. Wezham*, 6 Madd. 355, specific performance was decreed, although the annuitant was dead at the time of the decree; but see *Hitchcock v. Giddings*, Dan. 1.

(*w*) *Lysaght v. Edwards*, 2 Ch. D. 499, 507; 45 L. J. Ch. 544; *Rayner v. Preston*, 18 Ch. D. 1; 50 L. J. Ch. 472.

(*x*) *Bryant v. Busk*, 4 Russ. 1.

(*y*) *Leake*, 654; *Woolfe v. Horne*, L. R. 2 Q. B. D. 355; 46 L. J. Q. B. 534.

Expense of
covenants
for pro-
duction ;

and of
copies.

nant for the production of these latter (z) ; but the inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title is no objection to the title, in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents (a). Subject to any stipulation to the contrary in the contract, such covenants for production as the purchaser can and does require are furnished at his expense, the vendor bearing the expense of perusal and execution by and on behalf of necessary parties other than the purchaser (b) ; and now, where the vendor retains possession of any document, the expense of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, is to be borne by that purchaser (c).

Right to
deeds on
sale in
lots.

On the sale of a property in lots, without stipulation as to the custody of the deeds, the purchaser of the largest lot in value is entitled to the deeds ; but in a condition that the purchaser of the largest lot shall have the deeds, "largest" lot means largest in superficial area (d).

5. *Conditions relating to misdescriptions in the particulars.*

Condition
for com-
pensation ;

A condition is commonly inserted, providing that any misdescription in the particulars either way shall not annul

(z) *Gabriel v. Smith*, 16 Q. B. 847 ; 20 L. J. Q. B. 386 ; 37 & 38 Vict. c. 78, s. 2, r. 5 ; Dart, 142-4. See now 44 & 45 Vict. c. 41, s. 9, as to "acknowledgment" and "undertaking." The purchaser is not entitled to a covenant for the production of deeds of bargain and sale enrolled under 9 Anne, c. 18, or of copies of court roll not in the possession of the vendor ; *Cooper v. Emery*, 1 Ph. 388 ; 10 Sim. 609 ; 8 Jur. 181.

(a) 37 & 38 Vict. c. 78, s. 2, r. 3.

(b) *Ib.* r. 4.

(c) 44 & 45 Vict. c. 41, s. 3, sub-s. 6.

(d) *Griffiths v. Hatchard*, 1 K. & J. 17. The purchaser who is to have the deeds is generally made to covenant for their production.

the sale, but shall be matter for compensation; and, as a rule, the condition fixes the manner in which the compensation is to be settled. Such a condition has been held to apply to such misdescriptions as, in its absence, would vitiate the contract (e); but it cannot be enforced against the purchaser, where there has been fraud, either wilful or constructive, on the part of the vendor (f); or where the misdescription is on a material and substantial point, so far affecting the subject of the contract that it may be reasonably supposed that but for such misdescription, the purchaser would not have entered into the contract at all (g); or where, from the nature of the misdescription, the principle of compensation is inapplicable (h). The purchaser will be held to his bargain, if he was aware of the actual state of the property at the time when he purchased (i).

its applica-
tion;
when it
cannot be
enforced;

unless pur-
chaser not
deceived.

Sometimes it is stipulated that no allowance for misdescription shall be made or required either way. Where this was the case, and the purchaser sued for specific performance with, the Court decreed it without, compensation (j).

Condition
for no com-
pensation.

(e) *Leslie v. Tompson*, 9 Hare, 268; 20 L. J. Ch. 561; 15 Jur. 717. What effect a misdescription will have irrespectively of any condition has already been discussed in Ch. IV., *ante*. As to recovering compensation after completion, see *ante*, p. 52, note (c).

(f) *Duke of Norfolk v. Worthy*, 1 Camp. 337; cf. *Dalby v. Pullen*, 3 Sim. 29; *Wilde v. Gibson*, 1 H. L. C. 605; 12 Jur. 527. Cf. *ante*, pp. 50, 51, 57, note (d).

(g) See *ante*, p. 52; cf. *Wheatley v. Slade*, 4 Sim. 126; *Dykes v. Blake*, 6 Sco. 20; 4 Bing. N. C. 463; 7 L. J. C. P. 282; 10 W. R. 665; *In re Arnold*, 14 Ch. D. 270, 280.

(h) *Sherwood v. Robins*, Moo. & M. 194; *White v. Cuddon*, 8 Cl. & Fin. 766; cf. *Flight v. Booth*, 1 Sco. 190; 1 Bing. N. C. 370; 34 L. J. C. P. 66; *Roffey v. Smalleross*, 4 Madd. 227.

(i) *Farebrother v. Gibson*, 1 De G. & J. 602; cf. *White v. Cuddon*, *ubi supra*, where also see as to trustees; *Goddard v. Jeffreys*, W. N. 1881, 160.

(j) *Cordingley v. Cheeseborough*, 3 Giff. 496; 31 L. J. Ch. 617; 6 L. T. N. S. 15, 342; 8 Jur. N. S. 585, 755; cf. *Whittemore v. Whittemore*, L. R. 8 Eq. 603.

Condition
for refer-
ence to
arbitration.

The condition as to compensation frequently provides that any dispute which may arise under the contract shall be referred to arbitration. A breach of such a stipulation is a good cause of action (*k*).

Conditions
as to return
and war-
ranty of
goods.

Contracts for the sale of goods are often made upon condition that in case of breach of warranty the buyer may rescind the contract, return the goods and recover the price paid (*l*). If the condition limits the time for returning the goods, the buyer is not bound to abstain from taking them away, or to return them immediately, after receiving notice of a defect in them; and if, without his default, an accident happens to them within the limited time, the loss will not fall upon him (*m*). A condition limiting the duration of a warranty covers defects unknown to the vendor which are only discovered by the purchaser after the expiration of the time for which the warranty was given (*n*).

6. *Conditions relating to forfeiture of the deposit and a resale of the property.*

Usual con-
dition;

The conditions generally conclude with a provision for the deposit being forfeited, and the property being resold, in case of the purchaser failing to comply with the conditions, and for the costs of the resale, and any deficiency in price consequent upon it, being borne by the purchaser (*o*).

(*k*) *Livingston v. Ralli*, 5 E. & B. 132; 3 C. L. R. 1096; 24 L. J. Q. B. 269; 1 Jur. N. S. 594.

(*l*) Leake, 672.

(*m*) *Head v. Tattersall*, L. R. 7 Ex. 7; 41 L. J. Ex. 4.

(*n*) *Smart v. Hyde*, 8 M. & W. 723; 1 Dowl. N. S. 60; *Chapman v. Gwyther*, L. R. 1 Q. B. 463; 35 L. J. Q. B. 142.

(*o*) See *Essex v. Daniell*, L. R. 10 C. P. 538; 32 L. T. N. S. 476; *Thomas v. Brown*, 1 Q. B. D. 715; 45 L. J. Q. B. 811; *Cooper v. L. B. & S. C. Ry. Co.* 4 Ex. D. 88; 48 L. J. Q. B. 434; *Want v. Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Q. B. 108; *Best v. Hamand*, 12 Ch. D. 1; 48 L. J. Ch. 503.

Under such a condition, if the purchaser makes default, and its effect ; the vendor resells the property, the vendor can only recover, in addition to the deposit, so much of the difference between the two prices and of the expenses of the resale as is not satisfied by the deposit (*p*). If upon resale the estate produces more than the original purchase-money, the defaulting purchaser cannot call for an account of the surplus (*q*).

If a purchaser becomes bankrupt, his trustee may, in certain cases, elect whether to complete or abandon the purchase ; but he is bound by the condition as to resale as much as was the purchaser himself (*r*).

where the purchaser becomes bankrupt.

Even in the absence of express stipulation, if the purchaser fails to complete, he will forfeit his deposit ; and the vendor, having a lien on the estate for the purchase-money, will be entitled to have it resold, and will be able to recover the deficiency, if any, from the purchaser, or to prove for it as a debt upon his estate, if he has become bankrupt (*s*).

Where no such condition.

If the purchase goes off on account of a defect in the title, the purchaser can recover his deposit with interest from the time of payment, and his costs of investigating the title (*t*) ; but his right to interest and costs is generally barred by a special condition.

Purchaser's right to interest and costs.

(*p*) *Ockenden v. Henly*, E. B. & E. 485 ; 27 L. J. Q. B. 361 ; 4 Jur. N. S. 999. As to goods, see *post*, p. 200.

(*q*) *Ex parte Hunter*, 6 Ves. 94, 97 ; but see *Ex parte Gyde*, 1 G. & J. 323.

(*r*) See *post*, p. 189, note (z), and the cases cited below ; also *Moesser v. Wisker*, L. R. 6 C. P. 120 ; cf. *Ex parte Barrell*, L. R. 10 Ch. 512 ; 44 L. J. B. 138.

(*s*) *Depree v. Bedborough*, 4 Giff. 479 ; 33 L. J. Ch. 184 ; *Bowles v. Rogers*, 6 Ves. 95, note (a) ; *Ex parte Lord Seaforth*, 19 Ves. 235 ; *Ex parte Gyde*, 1 G. & J. 323 ; *Hope v. Booth*, 1 B. & Ad. 498. The vendor cannot exercise his lien against a sub-purchaser for value without notice ; *Kettlewell v. Watson*, W. N. 1882, 11. As to goods see *supra*, p. 105 ; *post*, pp. 199, 200.

(*t*) *Sykes v. Weld*, 7 Jur. N. S. 1280 ; cf. *Pounsett v. Fuller*, 17 C. B. 660 ;

As to stipulated damages for default. Sometimes the last condition provides for stipulated damages being paid by either party making default ; but the construction of such a clause appears to be attended with some doubt (*u*) ; it seems to raise a presumption that a forfeiture of the deposit was not intended (*v*).

Flureau v. Thornhill, 2 W. Bl. 1078 ; *Kirtland v. Pounsett*, 2 Taunt. 145 ; *Clare v. Maynard*, 6 A. & E. 519 ; 1 N. & P. 701 ; *Hopkins v. Grazebrook*, 6 B. & C. 31 ; *Walker v. Moore*, 10 B. & C. 416.

(*u*) *Randall v. Everest*, 2 C. & P. 577 ; Moo. & M. 41 ; *Crisdee v. Bolton*, 3 C. & P. 240 ; *Hinton v. Sparkes*, L. R. 3 C. P. 161 ; 37 L. J. C. P. 81 ; 17 L. T. N. S. 600.

(*v*) *Palmer v. Temple*, 9 A. & E. 508 ; 1 P. & D. 379.

CHAPTER VI.

THE SALE.

ASSUMING that the auctioneer is properly provided with a licence, is duly authorized to sell, and has satisfactorily arranged the preliminaries, we now come to consider what are his rights, duties and functions with regard to the actual sale.

As has been seen (a), an auctioneer is not restricted to carrying on business on his own premises, but may conduct sales on any premises he chooses. But care should be taken that the consent of the lessor is obtained, where it is intended to hold the sale in a house the lease of which, as is frequently the case with town houses, contains a covenant that the lessee will not permit a sale by auction upon the premises without the consent of the lessor; for the lessor would probably be able to obtain an injunction against a breach of such covenant, and thereby to prevent the sale from being held (b). Whether, in the absence of such a

On what premises sale may be conducted.

(a) *Ante*, p. 14.

(b) *French v. Macaulay*, 2 Dr. & War. 269, 275; cf. *Lumley v. Wagner*, 1 De G. M. & G. 604; 21 L. J. Ch. 898; *Joyce on Injunctions*, 63 *et seq.* Such a covenant was held to be broken, and the lease forfeited, where the lessee gave a bill of sale on his goods, with a power, which the grantee exercised, to sell by auction in default of payment; although, when the auction was actually held, the lessee had mortgaged the house by a sub-lease and executed a general assignment for the benefit of his creditors; *Toleman v. Portbury*, L. R. 7 Q. B. 344; 41 L. J. Q. B. 98; 26 L. T. N. S. 292; 20 W. R. 441.

Parol
licence to
enter pre-
mises.

Goods on
premises of
auctioneer,
for sale,
privileged
from dis-
tress.

covenant, a landlord who has let a dwelling-house as a dwelling-house can obtain an injunction to restrain the use of the house for the purpose of holding auctions, does not appear to have been decided; but, under a lease of a shop, back shop and cellar, there is not necessarily (*i.e.* apart from special agreement) inherent in the subject a prohibition against the use of it for the sale of goods occasionally by public auction (*c*). A parol licence to enter premises for the purpose of selling goods there is revocable; and if a person who has engaged an auctioneer by parol merely to sell goods upon his premises revokes his consent to the auctioneer being there, the latter has no right to continue on the premises, although he has incurred expenses in allotting and selling the goods, and only wishes to remain for the purpose of delivering the goods to the purchasers (*d*).

If the sale is held on the premises of the auctioneer, goods sent there for the purpose of being sold by auction cannot, while there, be distrained for rent (*e*), even if the premises consist of a room only hired temporarily for the purpose of the sale and from a person who had no authority to let it (*f*). This privilege does not, however, extend to goods on premises not in the occupation of the auctioneer;

(*c*) *Keith v. Reid*, L. R. 2 H. L. Sc. 39. In *Moses v. Taylor*, 11 W. R. 81, Kindersley, V.-C., is reported to have doubted whether holding a mock auction would be a breach of a covenant not to carry on "any offensive trade." A private house where a sale by auction takes place is "a place of public resort" within the Vagrant Act, 5 Geo. IV. c. 83, s. 4; *Sewell v. Taylor*, 7 C. B. N. S. 160; 29 L. J. M. C. 50.

(*d*) *Taplin v. Florence*, 10 C. B. 744; 20 L. J. C. P. 137; 15 Jur. 402.

(*e*) *Adams v. Grane*, 1 C. & M. 380; 2 L. J. Ex. 105. As to distress generally see *post*, Ch. XIV., s. 3.

(*f*) *Brown v. Arundell*, 10 C. B. 54; 20 L. J. C. P. 30; *Williams v. Holmes*, 8 Ex. 861; 22 L. J. Ex. 283; cf. *Lyons v. Elliott*, 1 Q. B. D. 210, 215; 45 L. J. Q. B. 159. Unless, perhaps, in the latter case, the rightful owner had objected; *Brown v. Arundell*, *ubi supra*.

and, therefore, where, a sale by auction of A.'s goods having been advertised to be held on A.'s premises, B. sent some articles to be sold at the same time, and these were distrained during the auction by A.'s landlord, it was held that the distress was valid (*g*).

Where the distress would be lawful, it seems that the auctioneer would have the vendor's authority to pay it off before the sale, provided it did not amount to more than the fair value of the goods (*h*), but that he could not charge the vendor with the amount, if the levy took place after the sale (*i*).

Threatened distress on other premises.

An auctioneer "has a possession coupled with an interest in goods which he is employed to sell, not a bare custody, like a servant or shopman" (*j*). He can maintain an indictment against any one who steals them (*k*), and an action against a person who wrongfully removes them out of his possession (*l*). The responsibility of the auctioneer for goods entrusted to him for sale forms the subject of a separate chapter (*m*).

Auctioneer's property in goods sold by him.

The auctioneer should always have his licence with him at the sale, ready for production upon demand made by the proper authorities ; for, if he is unable to produce it, he may be required to deposit £10, and if he fails to make such deposit, the sale may be stopped, and the auctioneer himself taken into custody (*n*).

Auctioneer must have his licence at sale ;

(*g*) *Lyons v. Elliott*, *ubi supra*.

(*h*) *Sweeting v. Turner*, L. R. 7 Q. B. 310, 314 ; 41 L. J. Q. B. 58.

(*i*) After the sale the property would remain at the risk of the purchaser ; *ibid*.

(*j*) *Per* Lord Loughborough, in *Williams v. Millington*, 1 H. Bl. 81, 85 ; approved *per* Mellor, J., in *Woolfe v. Horne*, 2 Q. B. D. 355, 358 ; 46 L. J. Q. B. 534, 536 ; and *per* Fry, J., in *Davis v. Artingtall*, 49 L. J. Ch. 609.

(*k*) *Viz.*, in his capacity of bailee ; cf. *Archbold*, 354.

(*l*) See the cases cited in note (*j*), *supra*. *Aliter* with fixtures to be detached by the purchaser ; *Davis v. Danks*, 3 Ex. 435 ; 18 L. J. Ex. 213.

(*m*) *Post*, Ch. XIII.

(*n*) Cf. *ante*, p. 18.

and exhibit
his name
&c. in
sale-room.

He is also required, under a penalty of £20, before commencing a sale, to affix or suspend, in some conspicuous part of the place where the sale is held, and to keep exposed during the sale, a ticket or board with his full christian name, surname and residence painted, printed or written upon it in large letters publicly visible and legible (*o*).

He must
follow
his instruc-
tions.

The auctioneer being an agent employed to effect the sale of property by competition, his duty is to obtain, by that mode of sale, the best price which such property will fairly fetch; and he must not sell for a less price or in a different manner than may be specified in his instructions. Where he has no instructions, he must pursue the accustomed course of his business (*p*).

His duty
personal.

Moreover, he must, in general, effect the sale himself (*q*); although, perhaps, he may employ his clerk to use the hammer and make the outcry, provided this be done under his own immediate direction and supervision (*r*), or even, under special circumstances, to write down the name of the purchaser (*s*).

Conduct of
sale.

The usual mode of conducting the different kinds of sales by auction has been already described (*t*). In ordinary cases, the auctioneer has the right to prescribe the rules of bidding and the terms of sale, provided he does not contravene the written particulars and conditions, if there are

(*o*) 8 & 9 Vict. c. 15, s. 7; see Appendix, *post*, p. 389.

(*p*) Cf. *ante*, pp. 24, 35.

(*q*) Cf. *ante*, p. 29.

(*r*) *Commonwealth v. Harnden*, 19 Pickering, 482; Story, Con. § 328. Mr. Story, referring to the above case, which was decided in 1851 in the Supreme Court of Massachusetts, goes on to say that the auctioneer is not bound in all cases to become the orator on the occasion of the sale, and that his occasional absence from the room will not invalidate the sale. This may be so; but the auctioneer might be liable to his employer in an action for negligence, although the sale was not void.

(*s*) See *post*, pp. 154 *et seq.* It is a common practice for auctioneers to entrust their less important sales, at any rate of goods, wholly to their clerks.

(*t*) *Ante*, pp. 2 *et seq.*

any (*u*). The particulars, or catalogue, and conditions, when there are any, should be circulated in the sale-room before the commencement of the sale (*v*) and publicly exposed to view on a board or paper attached to the auctioneer's desk or the walls of the room, so that the public may know on what terms they bid and be fixed with notice of their contents (*w*). After stating, or referring to, the particulars, saying, when such is the fact, that the sale is without reserve (*x*), and declaring, if necessary, or alluding to, the conditions (*y*), the auctioneer should read out, or give the substance of, any document announced to be read at the sale. If any error or omission has been discovered in the particulars, or catalogue, or conditions, since their first publication, the same should be carefully rectified, and pains taken that only corrected copies are distributed in the sale-room. The auctioneer should also verbally refer to the alterations that have been made, and draw the attention of those present to them; and he should clearly explain any ambiguity that there may be (*z*).

Particulars &c. should be distributed,

and read over by auctioneer.

Errors in them, how to be dealt with.

If it is no longer intended to put up any lots that have been advertised for sale, the fact should be announced as soon as possible, although the auctioneer is not liable for withdrawing them without notice, if he has acted *bonâ fide* (*a*). And when the property to be sold has been ad-

Withdrawal of lots.

Property

(*u*) Story, Con. § 321; Ag. § 107; Paley, P. & A. 362; and cf. *ante*, p. 25.

(*v*) Cf. *ante*, p. 88.

(*w*) *Mesnard v. Aldridge*, 3 Esp. 271; *Bywater v. Richardson*, 1 A. & K. 508; 3 N. & M. 748.

(*x*) Cf. *post*, p. 126.

(*y*) See *ante*, pp. 88, 89.

(*z*) *Ante*, p. 56. It cannot be too constantly borne in mind that, where there is a written contract, all alterations should be reduced into writing and embodied in it before signature.

(*a*) *Harris v. Nickerson*, L. R. 8 Q. B. 286; 42 L. J. Q. B. 171; 21

of third
party.

vertised as belonging to a certain person, and the property of another is sent in to be sold along with it, the auctioneer ought to mention the fact, if the ownership may influence the sale (*b*). It may amount to a misrepresentation on his part to sell goods as belonging to A., which he knows to belong to B. (*c*).

Calling on
bidders.

Before calling upon the company for their biddings, the auctioneer usually expatiates upon any particular feature in the property which he considers deserving of their consideration. Although in this stage of the proceedings a certain degree of latitude is allowed to the auctioneer, he must take care that what he intends as mere commendation does not amount to a warranty or a misrepresentation of fact.

Warranty,
what
amounts to.

Ward v.
Hobbs.

"An affirmation at the time of sale is a warranty, provided it appear on evidence to have been so intended" (*d*). If the auctioneer, or his employer through him, "expressly states upon a sale that he gives no warranty, and that the goods sold must be taken with all faults, but goes on expressly to say, in addition to that, that, so far as he knows, or believes, or has reason to believe, the goods are free from any particular fault . . . and it can afterwards be proved that to his knowledge the goods are not free from fault, then, notwithstanding the negation of warranty, an action would lie

W. R. 636 ; 28 L. T. N. S. 410. But if he make a representation that certain property will be sold, knowing at the time that it will be withdrawn, he will be liable to compensate an intending purchaser who has acted on the faith of the representation ; *Mainprice v. Westley*, 6 B. & S. 421 ; 34 L. J. Q. B. 229 ; 14 W. R. 9 ; 13 L. T. N. S. 560 ; *Richardson v. Silvester*, L. R. 9 Q. B. 34 ; 43 L. J. Q. B. 1.

(*b*) *Bezwel v. Christie*, 1 Cowp. 395, 397 ; *Hill v. Gray*, 1 Stark. 434.

(*c*) *Coppin v. Craig*, 7 Taunt. 243.

(*d*) *Per Buller, J.*, in *Pasley v. Freeman*, 3 T. R. 51, 57 ; 2 Sm. L. C. 64, 72 ; cf. *Bannerman v. White*, 10 C. B. N. S. 844 ; 31 L. J. C. P. 28. And such a representation is a warranty, if made during the treaty for a sale, provided it be not subsequently withdrawn, or expressly excluded by the terms of the contract of sale ; *Broom, C. L.* 344.

against him for deceit" (e); or even, it would seem, for a qualified warranty. Where the defendant, in answer to a question by the plaintiff, said that a mare was sound to the best of his knowledge, but, on being asked for a warranty, refused to give one, saying: "I never warrant, I would not even warrant myself," and it was proved that he knew that the mare was unsound, this was held to be a qualified warranty that the mare was sound to the best of his knowledge (f). And apparently a similar result would follow, if a statement were made recklessly and without reasonable ground for believing it to be true (g).

But the representation must form part of the contract of sale and not be a mere expression of opinion made antecedently to the sale, as an inducement to buy. Where the defendant, whose horse was at an auction-stable for sale, seeing the plaintiff examining the horse, told him, *bonâ fide*, that it was "sound in every respect," and, the horse being put up for sale without a warranty on the following day, the plaintiff became the purchaser, it was held that what was said before the sale was not a warranty, but a mere representation, for which, although contrary to the fact, the defendant was not liable, unless it was fraudulently made (h). Nor will mere passive acquiescence in the self-deception of the buyer be sufficient, in the absence of fraudulent concealment, to avoid the contract (i).

(e) *Per* Lord Cairns, L. C., in *Ward v. Hobbs*, 4 App. Cas. 13, 20; 48 L. J. Q. B. 281, 284. Cf. *ante*, p. 60.

(f) *Wood v. Smith*, 4 C. & P. 45; 5 Man. & R. 124.

(g) *Reese River Silver Mining Co. v. Smith*, L. R. 4 H. L. 64, 79; *Pulsford v. Richards*, 17 Beav. 87, 94; *Rawlins v. Wickham*, 3 De G. & J. 304, 316; *Evans v. Edmonds*, 13 C. B. 777, 786; *Att.-Gen. v. Ray*, L. R. 9 Ch. 397, 405; 43 L. J. Ch. 478.

(h) *Hopkins v. Tanqueray*, 15 C. B. 130; 23 L. J. C. P. 162; cf. *Studey v. Bailey*, 1 H. & C. 405, 416; 31 L. J. Ex. 483. As to the meaning of the term "soundness," see *ante*, p. 59.

(i) *Hill v. Balls*, 2 H. & N. 299; 27 L. J. Ex. 45; *Smith v. Hughes*,

When warranty must be in writing.

When the contract has been reduced into writing, the existence of the warranty cannot be proved by oral evidence ; but the purchaser can adduce such evidence to show that the vendor fraudulently obtained his consent to the bargain by means of a representation which was false to the latter's knowledge (*j*).

When it is implied.

On a sale of goods which the buyer has no opportunity of inspecting, there is an implied warranty that the goods answer the description given of them, and that they are merchantable under that description, the maxim *caveat emptor* not applying in such a case (*k*). And on a sale by sample, there is an implied warranty that the sample is fairly taken from the bulk of the commodity ; but not that the bulk is, at the time the sample is exhibited, of the same quality and description as the sample (*l*). And, in some cases, a warranty of the vendor's title to the goods sold will be implied (*m*).

Merchandise Marks Act, 1862.

By 25 & 26 Vict. c. 88, ss. 19 and 20, the vendor of an article bearing a trade-mark, or a description of its number, quantity, measure or weight, or a designation of the place where it has been made, is to be deemed to contract with the purchaser that the trade-mark is genuine, or that the description or designation is true. And s. 18 of 29 Vict. c. 37, enacts that every person selling hops in any bag or

Hop Act, 1866.

L. R. 6 Q. B. 597 ; 40 L. J. Q. B. 221 ; *Ward v. Hobbs*, 4 App. Cas. 13 ; 48 L. J. Q. B. 281.

(*j*) Add. Con. 495, 500.

Sale of article for specific purpose.

(*k*) Add. Con. 493 ; *Jones v. Just*, L. R. 3 Q. B. 197 ; 37 L. J. Q. B. 89 ; *Mody v. Gregson*, L. R. 4 Ex. 49 ; 38 L. J. Ex. 12. On the sale of an article for a specific purpose there is a warranty by the vendor that it is reasonably fit for the purpose, and there is no exception as to latent undiscoverable defects ; *Randall v. Newson*, 2 Q. B. D. 102 ; 46 L. J. Q. B. 259 ; *Hyman v. Nye*, 6 Q. B. D. 685.

(*l*) Add. Con. 495 ; *Sayers v. London and Birmingham Flint, Glass and Alkali Co.*, 27 L. J. Ex. 294.

(*m*) See *post*, p. 193.

pocket marked with any name, &c., intended to indicate the name of the person by whom, or the place where, or the year when, such hops were grown, shall be deemed to contract that the description &c. were genuine and true and in accordance with the act and with 48 Geo. III. c. 134, and 54 Geo. III. c. 123.

It has not been expressly decided whether an auctioneer has an implied authority to warrant goods which he is instructed to sell; but it is thought that, if it is the general practice in his employer's business to warrant the articles sold, an authority will be implied in the auctioneer to warrant such articles, but not otherwise (*n*).

If, in selling goods, the auctioneer warrants them to be of a certain quality or species, and does not disclose the name of his principal, he will be personally liable on the warranty; but if he does disclose the name of his principal, and acts within his authority, he will not be liable (*o*).

The lots, if the sale is in lots, are put up in succession, and the biddings, once commenced, are continued as long as any person will increase upon the previous bidding. The biddings need not be by word of mouth (*p*). As a

(*n*) *Alexander v. Gibson*, 2 Camp. 555; *Sandilands v. Marsh*, 2 B. & Ald. 673, 679; *Dingle v. Hare*, 7 C. B. N. S. 29; L. J. C. P. 143; 6 Jur. N. S. 179; *Howard v. Sheward*, L. R. 2 C. P. 148; 36 L. J. C. P. 42 (where it was held that the servant of a horse-dealer had an implied authority to warrant, even though he had, unknown to the purchaser, received orders not to warrant; but the servant of a private person, employed on one particular occasion to sell a horse, has no implied authority to warrant; *Brady v. Tod*, 9 C. B. N. S. 592; 30 L. J. C. P. 223); *Brett v. Clowser*, 3 C. P. D. 376, 386; Add. Con. 503. See also postscript, post, p. 130; and *Bank of Scotland v. Watson*, 1 Dow, 40, 45.

(*o*) Story, Con. § 333. In the first instance he can recover from his principal, if he has not exceeded his authority, or if his principal has ratified his act, and there has been no fraud on his part; *Adamson v. Jerris*, 4 Bing. 66, 72; 12 Moo. C. P. 241.

(*p*) *R. v. Taylor*, M'Cle. 362; Price, 636, *sub nom. Att.-Gen. v. Taylor*. See ante, p. 9.

Puffers
&c.

general rule, the names of the bidders are not recorded, except where, from the importance of the transaction, or for some other reason (*q*), formality is required, when the auctioneer writes down the biddings as they occur, with the names of the respective bidders. The vendor may bid, by himself or his agent or agents, to the extent to which he has expressly reserved the right to do so; but, to render a sale binding on the purchaser, the biddings must be obtained without fraud, and not by means of puffers, by-bidders, *whitebonnets* or decoy ducks employed for the purpose of unduly enhancing the value, under a secret understanding that they shall not be bound by their bids (*r*).

Duress.

Duress is, of course, unlawful; and not only may money paid under fear of violence or illegal detention be recovered back (*s*), but a person obtaining money by means of threats may be convicted of larceny (*t*). And if an auctioneer conspire with his principal to practise a fraud upon the bidders, he will have no remedy against him for any damages he may have had to pay to a party defrauded (*u*).

Unfairness
on the part
of bidders.

On the other hand, there must be no unfairness on the part of the bidders. In one case the Court refused specific performance to a purchaser on the ground that he had deterred bidders by employing a known agent of the vendor to bid for him (*v*). And, indeed, where upon a sale by auction

(*q*) *E.g.*, when the sale is under a decree, every bidder is required to sign his name, and the sum he offers, on an official bidding paper; see *post*, p. 368. Mr. Rouse has suggested that this plan, or some modification of it, might with advantage be more generally adopted.

Sham bids
bystranger.

(*r*) Story, Con. § 337; cf. *post*, Chap. VII. But if neither vendor nor auctioneer authorizes sham bids, they are not liable, the purchaser's remedy being against the party making them; Story, Con. § 338.

(*s*) Notes to *Marriott v. Hampton*, 2 Sm. L. C. 405, 413.

(*t*) *Reg. v. M'Grath*, L. R. 1 C. C. R. 205; 39 L. J. M. C. 7; and see Archbold, pp. 374, 453.

(*u*) *Merryweather v. Nixan*, 8 T. R. 186; 2 Sm. L. C. 527.

(*v*) *Twining v. Morrice*, 2 Bro. Ch. 326; approved in *Downes v. Grazebrook*, 3 Mer. 200, 209.

the purchaser had induced the vendor to think that he should not bid, and so put him off his guard, and the estate was knocked down to him, owing to a misapprehension on the part of the person employed to make the reserved bidding, the Court refused to enforce the contract at his suit (*w*). And it seems that a purchaser who bids for goods without intending to pay for them is guilty of a fraudulent misrepresentation which would avoid the contract (*x*). It is, in general, considered unfair for any one wilfully to interfere so as to prevent others from freely joining in the competition, or wilfully to use means whereby the result of the sale is turned to the disadvantage of the seller. Where a bidder at an auction-sale of a barge taken under an execution stated to the company present that he had a claim against, and had been badly used by, the late owner of the barge, in consequence of which others were deterred from bidding, and he and a friend of his were left the only bidders, it was held that there was no legal sale, and that the vendor was justified in refusing delivery of the barge (*y*). But an agreement between intending purchasers not to bid against each other is not illegal (*z*); and in some trades *knock out sales* (*a*) are common (*b*).

(*w*) *Mason v. Armitage*, 13 Ves. 25.

(*z*) *Ex parte Whittaker*, L. R. 10 Ch. 446, 449; 44 L. J. Ch. 91, 92; where it was held that the mere fact that a person bought goods at an auction, after having been served with a petition on which he was subsequently adjudicated a bankrupt, did not amount to a misrepresentation so as to avoid the contract and entitle the vendor to a return of the goods.

(*y*) *Fuller v. Abrahams*, 3 B. & B. 116; 6 Moore, 316.

(*z*) *Galton v. Emuss*, 1 Coll. 243; 8 Jur. 507; cf. *In re Carew's Estate Act*, 26 Beav. 187; 28 L. J. Ch. 218; *Heffer v. Martyn*, 36 L. J. Ch. 372; 15 W. R. 390; W. N. 1867, 50, 75; *Chattock v. Muller*, 8 Ch. D. 177.

(*a*) A *knock out sale* is where several persons, before attending a sale by auction, agree together that one of them only shall bid for any particular article, and after the sale put up privately amongst themselves the goods that each has bought at the auction, dividing the difference between the price at which the goods were originally bought and that which was subsequently realized. *Knock out sale defined.*

(*b*) *Maclach*, 16, *n.*, where the learned author suggests that the mischiefs

Auctioneer
must take
all bids.
Exceptions.
Vendor.

An auction being an open sale, the auctioneer cannot, in general, refuse to accept biddings; but, where the sale is without reserve, he ought not to accept a bidding from the vendor or any one acting on his behalf (c). If property is put up with a right of bidding once reserved to the vendor, that right is exercised, if the auctioneer, with the vendor's authority, start the property at a certain sum, and the purchaser may avoid the contract, if the auctioneer make, or accept, a further bidding for the vendor (d). The auctioneer should, moreover, refuse to accept the biddings of persons who labour under an incapacity, such as infants, lunatics, drunken persons or people standing in a fiduciary relation to the property sold.

Infants.

By the Infants Relief Act, 1874 (e), contracts for the sale to infants of goods other than necessities are absolutely void; and an infant cannot be adjudicated a bankrupt in respect of debts incurred by him under such contracts (f). But although an infant can abandon a contract into which he has entered, he cannot, perhaps, except under special circumstances, recover money which he has actually paid under it (g). If an infant has induced a contract with him

occasioned by such agreements may be obviated by fixing a reserved price. He goes on to add that in Scotland such agreements vitiate the sale. And see *Levi v. Levi*, 6 C. & P. 239 (a *nisi prius* case), where Gurney, B., said, referring to knock out sales: "Owners of goods have a right to expect at an auction that there will be an open competition from the public; and if a knot of men go to an auction upon an agreement among themselves of the kind above described, they are guilty of an indictable offence."

(c) *Post*, Chap. VII., and *post*, p. 126.

(d) See judgment of Grove, J., in *Parfitt v. Jepson*, 46 L. J. Q. B. 529; 36 L. T. N. S. 251.

(e) 37 & 38 Vict. c. 62, s. 1. As to what are necessities, see Poll. Con. 49; Add. Con. 117; Leake, 549.

(f) *Ex parte Jones*, 18 Ch. D. 109; 50 L. J. Ch. 673. An infant cannot obtain specific performance of a contract other than for necessities, nor can the other party, it appears, rescind it; Dart, 1044; Sugd. 217; *Flight v. Bolland*, 4 Russ. 298.

(g) Dart, 26; Poll. Con. 44; *Ex parte Taylor*, 8 De G. M. & G.

by an express representation (*h*) that he was of full age, he is liable in equity for the fraud, and in such a case it has been decided that, if he becomes bankrupt after he is of full age, the person who has been defrauded can prove in the bankruptcy for the amount of the equitable liability resulting from the fraud (*i*). An infant can act as agent for another person (*j*).

A married woman can purchase so as to bind her separate estate (*k*); but she cannot pledge her husband's credit without authority from him, either express or implied (*l*). Married women.

With regard to lunatics, the rule appears to be that sale-transactions with a person apparently sane, but afterwards found to be of unsound mind, will not be set aside against those who have dealt with him in the *bonâ fide* belief that he was of competent understanding (*m*). Lunatics.

A contract into which a person has been induced to enter while in a state of complete intoxication will be set Drunkards.

254, a case before the act, where it was held that an infant who had paid a premium on entering into a partnership and had, before coming of age, disaffirmed the contract could not, in the absence of fraud, recover his deposit.

(*h*) The representation must be express: the mere fact that the infant was engaged in trade would not be sufficient; and it must also be one that would naturally deceive the person to whom it was made; see judgment of Jessel, M.R., in *Ex parte Jones, ubi supra*; cf. *Nelson v. Stocker*, 4 De G. & J. 458; 28 L. J. Ch. 760.

(*i*) *Ex parte Unity Banking Association*, 3 De G. & J. 63; 27 L. J. B. 33.

(*j*) *Watkins v. Vince*, 2 Stark. 368; Add. Con. 47.

(*k*) *Dart*, 28; *Leake*, 554 *et seq.*; *Poll. Con.* 58 *et seq.*; Add. Con. 127 *et seq.*

(*l*) *Debenham v. Mellon*, 6 App. Cas. 24; 50 L. J. Q. B. 155.

(*m*) *Dart*, 6; Add. Con. 140; *Elliott v. Ince*, 7 De G. M. & G. 475, 488; *Molton v. Camroux*, 4 Ex. 17; 18 L. J. Ex. 356. Evidence of the lunatic's conduct, as well before, as after, his signing the contract, is admissible for the purpose of fixing the other contracting party with notice of the insanity; *Beavan v. M'Donnell*, 10 Ex. 184; but evidence of general reputation of lunacy is not sufficient; *Greenslade v. Darr*, 20 Beav. 284.

aside (*n*) ; but the fact that he was considerably in liquor when he entered into the agreement is not alone a reason for refusing specific performance against him, if there was no fraud. The question is whether he entered into the agreement with full understanding and knowledge of what he was doing (*o*).

Bankrupts.

The title of a trustee in bankruptcy relates back to the date when the act of bankruptcy upon which adjudication is founded was committed ; and no person having had notice of an act of bankruptcy available for adjudication can prove for any subsequent debt or liability contracted by the bankrupt (*p*) ; but a debt or liability incurred by the bankrupt under a contract made in good faith and for valuable consideration before the date of the order of adjudication with a person not having, at the time of making such contract, notice of an act of bankruptcy committed by the bankrupt may be proved for (*q*). Notice of an act of bankruptcy means knowledge thereof, or wilfully abstaining from acquiring such knowledge (*r*) ; and true information that an act of bankruptcy has been committed, in whatever way or from whatever quarter it may come, is sufficient (*s*).

(*n*) *Cooke v. Olayworth*, 18 Ves. 12 ; approved in *Nagle v. Baylor*, 3 Dr. & War. 60 ; *Gore v. Gibson*, 13 M. & W. 623 ; *Pitt v. Smith*, 3 Camp. 33.

(*o*) *Lightfoot v. Heron*, 3 Y. & C. 586 ; Sugd. 212 ; Add. Con. 319 ; Poll. Con. 82. 'A contract made by a man when drunk may be ratified by him when sober ; *Matthews v. Baxter*, L. R. 8 Ex. 132 ; 42 L. J. Ex. 73.

(*p*) 32 & 33 Vict. c. 71 (Bankruptcy Act, 1869), s. 31.

(*q*) *Ib.* ss. 94, § 3, 95. For definition of act of bankruptcy, and as to commencement of bankruptcy and vesting of the property in the trustee, see ss. 6, 11, 15, 17 ; *post*, Appendix, p. 398. See also *post*, p. 189, as to trustee's right to disclaim.

(*r*) *Bird v. Bass*, 6 Man. & G. 143 ; *Ex parte Snowball*, L. R. 7 Ch. 534, 549.

(*s*) *Lucas v. Dicker*, 6 Q. B. D. 84, 88 ; 50 L. J. Q. B. 190.

As a general rule, purchases of property towards which the purchaser stands in a fiduciary position, *e.g.*, by trustees (*t*), solicitors (*u*) &c., may be set aside at the suit of the owner or a party interested in the property (*v*). As a rule, the auctioneer should not bid himself: he cannot buy, either for himself (*w*), or for a third party (*x*), the property which he is employed to sell.

If the biddings do not come up to the reserved price, the auctioneer withdraws the property, or the lot, whichever it may be, from the sale. If the reserve is nearly, but not quite, reached, the auctioneer, supposing his instructions to

Trustees &c.

As to auctioneer bidding.

The reserved price.

(*t*) *Downes v. Grazebrook*, 3 Mer. 200; Sugd. 691. The rule is said to be more than ordinarily stringent against assignees or trustees of bankrupts; Dart, 32; and in a recent case, where a trustee in bankruptcy purchased the property of the debtor, his conduct was disapproved, although it had been sanctioned by a resolution of the creditors; *In re Wainwright*, W. N. 1881, 138; 30 W. R. 62; *In re Moore*, W. N. 1881, 151; 45 L. T. N. S. 558; 30 W. R. 123. See also *Ex parte Lewis*, 1 G. & J. 69; *Ex parte Buxton*, *ib.* 355. But a purchase at an adequate price by a trustee for sale, at a sale by auction which is in fact conducted by the *cestui que trust*, may perhaps be supported; Dart, 43, citing *Coles v. Trecothick*, 9 Ves. 234; 1 Smith, 233.

Trustee in bankruptcy.

Trustee for sale.

(*u*) *Ex parte Bennett*, 10 Ves. 380; *M'Pherson v. Watt*, 3 App. Cas. 254. In *Nelthorpe v. Pennyman*, 14 Ves. 517, Lord Eldon, L. C., is reported to have said: "It would be a very wholesome rule to lay down, that the solicitor in the cause should have nothing to do with the sale; as the certain effect of a bidding by the solicitor is that the sale is immediately chilled."

(*v*) Dart, 31; Sugd. 688.

(*w*) He is not, however, absolutely disqualified; see *ante*, p. 28, note (o).

(*x*) Story, Con. §§ 319, 329; cf. Story, Ag. § 211. Where the same agent acts for two opposing parties, it must appear that the principals were placed at arm's length in the transaction; Dart, 31. The first duty of an auctioneer is towards his principal, and the effect of his bidding for a third person might be to damp the sale. In *Twining v. Morrice*, 2 Bro. Ch. 326; approved in *Downes v. Grazebrook*, 3 Mer. 200, 209; specific performance was refused at the suit of a purchaser who had employed a known agent of the vendor to bid for him. A contrary opinion to that stated in the text is, however, expressed in *Bezwel v. Christie*, 1 Cowp. 395, 397, decided in 1776. If an auctioneer has been requested by a third party to bid for him, he should always obtain his principal's consent to his doing so.

Auctioneer acting for intending purchaser.

authorize such a course (*y*), will intimate that he is prepared to treat for a sale by private contract. If the reserve is passed, the auctioneer allows the biddings to continue, so long as they proceed briskly; but, as soon as they begin to flag, he declares the sale to be an open one.

Retraction
of bidding.

Every bidding is but an offer on one side, which is not binding on either, until it is accepted by the auctioneer, who declares the sale complete by knocking down the hammer, or in some other usual mode (*z*). And, in cases where a written contract is necessary, it seems that a purchaser may retract his bidding after the lot has been knocked down to him, but before the auctioneer has actually made the entry (*a*). At the close of the biddings the auctioneer

Declaring
purchaser.

ought to declare the highest bidder purchaser. If he, without disclosing his principal, puts up property under a condition that the highest bidder shall be the purchaser, and as being sold without reserve, he contracts with the highest *bonâ fide* bidder that the property shall be knocked down to him (*b*); but, on the other hand, if his principal is disclosed, he is not liable in contract, though he may be in an action for deceit, if, under such conditions, a bidding is made on behalf of the principal, and he knowingly accepts it (*c*); and in any event it would appear that the principal is liable, if he authorizes his property to be put up for sale

(*y*) See *ante*, p. 27.

(*z*) Where the property consists of goods of a less value than £10, the transaction is then complete without any writing; *Eden v. Blake*, 13 M. & W. 614; 14 L. J. Ex. 194; *post*, p. 164.

(*a*) *Ante*, p. 30. The entry should be made immediately; *Jones v. Nanney*, 13 Price, 76, 102; M'Cle. 25.

(*b*) *Warlow v. Harrison*, 1 E. & R. 295; 29 L. J. Q. B. 14; 6 Jur. N. S. 66; cf. *Harris v. Nickerson*, L. R. 8 Q. B. 286, 288, 289; 42 L. J. Q. B. 171; 21 W. R. 636; 28 L. T. N. S. 410.

(*c*) *Mainprice v. Westley*, 6 B. & S. 421; 34 L. J. Q. B. 229; 13 L. T. N. S. 560; 14 W. R. 9; cf. *Richardson v. Silvester*, L. R. 9 Q. B. 34; 43 L. J. Q. B. 1.

as without reserve and afterwards buys it in himself or procures some one to buy it in for him (*d*). It is said that, when once the hammer has fallen, the vendor cannot revoke the authority of the auctioneer (*e*).

If the sale be of real estate, or of goods, wares or merchandise to the amount of £10 or upwards (*f*), the auctioneer, or sometimes his clerk (*g*), should write down the name of the purchaser of each lot, or of the purchaser's agent, together with the price bid, against the description of the lot in the particulars or catalogue, taking care that the conditions (and the plan, if any) are incorporated therewith, or distinctly referred to in the entry (*h*). And it is not sufficient for him to make these entries in his ledger, or sale-book, only, unless reference is clearly made therein to the particulars (or catalogue) and conditions (*i*). And if the particulars or conditions have been in any way altered, the alteration must appear in the copy on which the memorandum is made; and proof will be required that the purchaser knew of the alteration. Where chattels were sold by auction, and on the day following the sale the purchaser signed a memorandum endorsed on conditions which differed materially from

Auctioneer must enter purchaser's name, &c.

(*d*) *Warlow v. Harrison*, *ubi supra*.

(*e*) *Day v. Wells*, 30 Beav. 220; 7 Jur. N. 1004. But see Leake, 279. See also *ante*, p. 30.

(*f*) Even when the sale is of goods of a less value than £10, the name of the purchaser and the price should be written down, to avoid risk of dispute. The auctioneer must always bear in mind that he is liable to pay damages to his employer, if the sale goes off in consequence of his negligence; *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52; *Hibbert v. Bayley*, 2 F. & F. 48.

(*g*) If the purchaser has assented to his doing so; cf. *post*, 154—6.

(*h*) *Post*, pp. 159, 160. If the conditions have, during the progress of the sale, become detached from the particulars, they must be connected together again, before the signature is affixed; *Kenworthy v. Schofield*, 2 B. & C. 945, 948.

(*i*) *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52; *Rishton v. Whatmore*, 8 Ch. D. 467; 47 L. J. Ch. 629.

The con-
tract.

Auctioneer
selling his
own pro-
perty.

The de-
posit.

those appended to the catalogue of sale, of which alone he had notice, and paid a deposit in pursuance of, as he believed, the conditions that were published at the sale, it was held that he could not be sued on the conditions appended to the memorandum, but only on those read out in the auction-room (*j*). The entry should, moreover, be made without delay, as the auctioneer's authority to sign for the purchaser ceases on the termination of the sale (*k*). On the sale of real estate the best mode of completing the contract is for the vendor and purchaser, or their agents, to sign a memorandum at the foot, or on the back, of the particulars with the conditions annexed (*l*).

When the auctioneer is selling his own property, he cannot bind the purchaser by himself signing the name of the latter (*m*). In such a case, therefore, the purchaser should be made to sign himself or by his agent (*n*).

The conditions of sale generally provide that a certain percentage of the purchase-money shall be paid forthwith by the purchaser, as a deposit, into the hands of the auctioneer (*o*). When the subject of the sale is land, the auctioneer has, as a rule, no authority to receive more than the deposit (*p*).

(*j*) *Page v. Cowasjee Eduljee*, L. R. 1 P. C. 127. Nor could he have been sued at all, unless some act had been done to take the case out of the Statute of Frauds; see *post*, Chap. VIII.

(*k*) See *ante*, p. 27.

(*l*) Cf. *ante*, p. 89. For forms of such memorandum, see *post*, pp. 342, 344.

(*m*) Cf. *ante*, p. 26, note (*e*).

(*n*) The auctioneer's clerk may act as agent for the purchaser to bind him, if the latter assent; *Bird v. Boulter*, 4 B. & Ad. 443; 1 N. & M. 313; *post*, pp. 154-6.

(*o*) Sometimes the auctioneer, when he has personal knowledge of the purchaser, does not exact the deposit; but in omitting to do so he acts at his own peril, see *post*, p. 175.

(*p*) See *ante*, p. 27. An auctioneer employed to sell goods for ready money is the agent of the vendor to receive the price, unless by the conditions it is to be paid to some one else; *Sykes v. Giles*, 5 M. & W. 645, 650; and see *ante*, p. 26.

In every case he must take care that whatever money he is authorized to receive is paid to him in the manner indicated in his instructions (*g*). Should the purchaser fail to pay the deposit, when required; to do so, it is thought that the vendor would be entitled to treat the contract as at an end, and that the auctioneer would be justified, even apart from the conditions, in putting up the property for a fresh sale.

At, or immediately after, the sale, the auctioneer ought to disclose the name of his principal, if he wishes to avoid future responsibility (*r*). It will be sufficient, if he writes the name on the memorandum or contract. Auctioneer should disclose his principal.

If any lots remain unsold, or if any alteration be made in the conditions after the property has been knocked down, the sale ought to be treated as one by private contract, and an agreement signed by the principals themselves (*s*), unless the auctioneer is expressly authorized to act as agent for one or both of the parties (*t*). If it is desired under such circumstances to incorporate the conditions of sale with the contract, they must be expressly referred to, for they are not necessarily included, in it (*u*). Sale, by private contract, of lots unsold at auction.

In ordinary cases (*v*) the contract is complete when the Sale, when complete.

(*g*) *Ante*, p. 27.

(*r*) *Sugd.* 53; *Hanson v. Roberdeau*, Peake, N. P. C. 163; *Mills v. Hunt*, 20 Wend. 431; *Franklyn v. Lamond*, 4 C. B. 637; 16 L. J. C. P. 221; 11 Jur. 780.

(*s*) *Broom*, C. L. 416.

(*t*) *Mear v. Carr*, 1 H. & N. 484; 26 L. J. Ex. 39. Cf. *Hamer v. Sharp*, L. R. 19 Eq. 108; 44 L. J. Ch. 53; and *ante*, p. 27, note (*k*).

(*u*) *Cowley v. Watts*, 22 L. J. Ch. 591; 17 Jur. 172. For form of agreement, see *post*, p. 345. Forms of agreements not referring to the conditions are given *post*, pp. 345, 346; but it is dangerous for an auctioneer to draw up such an agreement himself, or, generally, to trust to a cut and dried form. As a rule, such an agreement should only be drawn up under competent legal advice. Caution,

(*v*) Not when the sale is by the Court; see *post*, p. 248.

purchase agreement is signed, and the right of property, when the subject of sale is goods, or the beneficial interest, when it is land, then vests in the purchaser (*w*).

(*w*) See *post*, pp. 184 *et seq.*

Auc-
tioneer's
authority
to warrant.

Postscript to Chapter VI.—Since the above paragraph upon the auctioneer's authority to warrant goods entrusted to him to sell (see *supra*, p. 119) was written, a decision upon the question has been given in *Payne v. Lord Leconfield*, an action for breach of warranty of a horse sold by auction. The jury being unable to agree, Mr. Justice Bowen directed them to find a formal verdict for the defendant, upon the ground that an auctioneer employed to sell a horse had no implied authority to warrant him. The auctioneer in the case was the proprietor of a horse and carriage repository, and the defendant, the vendor, a private individual who had sent the horse for sale with a written description which did not contain the warranty given by the auctioneer. No evidence was given that it was customary to warrant. (*Ex relatione* Mr. J. D. Fitzgerald.) This direction has since been upheld by Grove and Mathew, J.J., sitting as a Divisional Court.

CHAPTER VII.

PUFFERS ; RESERVED BIDDINGS, ETC.

It seems to have been a common practice from an early period for the seller at an auction to employ some one to bid on his behalf, in order to prevent the property from being sold at any considerable loss. The fairness of such a proceeding, where a right to bid has been expressly reserved, appears never to have been doubted ; but upon the question of its legality in the absence of any such reservation a difference of opinion arose towards the end of the last century between the courts of common law and the courts of equity (a).

The common law courts took the stricter view. It was held at law that a covert bidding on the part of the seller was fraudulent, whether the sale was advertised as without reserve or not. In the leading case of *Bexwell v. Christie* (b) Lord Mansfield, C. J., said that the question was whether, at

Private
biddings :

how viewed
at law ;

(a) A person who bids at an auction as secret agent of the seller for the purpose of running up the price by leading on others to bid is called a puffer, or setter. Puffers were known in Cicero's time : "*Non illicitorem venditor, non qui contra aase liceatur emptor apponet ;*" *De Off. lib. iii. s. 15*. In Scotland they are called *whitebonnets* : "The intervention of a whitebonnet is held in law to be a fraud upon the other bidders ; and either the next highest offerer will be preferred to the purchase, or the sale effected by such means may be entirely set aside ;" *Bell, Dict. 1861 ed. 859 ; see also Bell, Prin. 6th ed. § 181*.

(b) 1 Cowp. 395 ; action against an auctioneer for selling for £8 16s. 6d. a gelding which he had directions not let go under £15 ; cf. *infra*, p. 141.

a sale under conditions that "the highest bidder shall be the purchaser, and if a dispute arise, to be decided by the majority of the persons present," the owner might privately employ another person to bid for him; and he expressed himself as follows: "The basis of all dealings ought to be good faith; so more especially in these transactions, where the public are brought together upon a confidence that the articles set up to sale will be disposed of to the highest real bidder: that could never be the case, if the owner might secretly and privately enhance the price by a person employed for that purpose." His lordship characterized such a practice as a fraud upon the sale and upon the public, and proceeded thus: "The disallowing it is no hardship upon the owner. For, if he is unwilling his goods should go at an under-price, he may order them to be set up at his own price, and not lower. Such a direction would be fair. Or he might do as was done by Lord Ashburnham, who sold a large estate by auction. He had it inserted in the conditions of sale that he himself might bid once in the course of the sale; and he bid at once £15,000 or £20,000. Such a condition is fair, because the public are then apprised and know upon what terms they bid" (c). The principle of this decision was adopted by Lord Kenyon (d), Lord Tenterden (e) and other eminent judges on the same side of Westminster Hall (f). The intervention of even a single puffer was held to vitiate a sale; nor did the courts inquire whether

*Howard v.
Castle.*

(c) Cf. Grose, J., in *Howard v. Castle*, 6 T. R. 642: "If the owner of goods put up to sale at an auction wishes that they shall not be sold under a particular price, he may declare so, before the auction begins, or he may reserve one bidding for himself, or declare that he has appointed a particular person to bid for him. In either of those cases the parties meet on fair terms."

(d) *Howard v. Castle*, 6 T. R. 642.

(e) *Wheeler v. Collier*, Moo. & M. 123.

(f) See *Crowder v. Austin*, 3 Bing. 368; 11 Moore, C. P. 283;

the object of his employment was to stimulate the zeal of buyers generally, or to prevent the property from being sold at a sacrifice (*g*).

In equity, on the other hand, the employment of some ^{how in} one person to bid for the vendor, in order that the property ^{equity.} might not be sold at an undervalue, was considered legitimate, although not notified to the public beforehand, or to the company present at the sale; unless, indeed, the sale was stated to be without reserve, or to that effect. In *Conolly v. Parsons* (*h*) Lord Loughborough (*i*), C., said: "I feel vast difficulty to compass the reasoning that a person does not follow his own judgment because other persons bid: that the judgment of one person is deluded and influenced by the bidding of others. It may weigh, if A., a skilful man, B., a cautious man, and C., a wealthy man, are in competition; but where it is publicly known that persons are employed to bid, it would be very foolish in any one to let himself be so influenced." This, however, is not the ground upon which later decisions in equity are rested; and a truer exposition of the equitable doctrine is to be found in the judgment of Sir William Grant, M. R., in *Smith v. Clarke* (*j*). There the vendors of an estate had *Smith v. Clarke.*

R. v. Marsh, 3 Y. & J. 331; *Thornett v. Haines*, 15 M. & W. 367; 15 L. J. Ex. 230; *Green v. Baverstock*, 14 C. B. N. S. 204; 32 L. J. C. P. 181; 8 L. T. N. S. 360; 10 Jur. N. S. 47; *Warlow v. Harrison*, 29 L. J. Q. B. 14, 15; cf. *Hopkins v. Tanqueray*, 15 C. B. 130; 2 C. L. R. 842; 23 L. J. C. P. 162; 18 Jur. 608; *Mainprice v. Westley*, 6 B. & S. 421; 34 L. J. Q. B. 229; 13 L. T. N. S. 560; 14 W. R. 9.

(*g*) *Crowder v. Austin*, 3 Bing. 368; 11 Moore, C. P. 283; *Wheeler v. Collier*, Moo. & M. 123; *Green v. Baverstock*, 14 C. B. N. S. 204; 32 L. J. C. P. 181; 8 L. T. N. S. 360; 10 Jur. N. S. 47 (where Willes, J., appears to have erroneously supposed that the rule in equity was confined to sales by the Court):

(*h*) 3 Ves. 625, 627 n.

(*i*) Afterwards Earl of Rosslyn.

(*j*) 12 Ves. 477; cf. *Flint v. Woodin*, 9 Hare, 618; 16 Jur. 719; *Woodward v. Miller*, 2 Coll. C. R. 279; 15 L. J. Ch. 6.

privately employed a person to bid for them, at the sale, up to a moderate limit, and he had bid accordingly, without the knowledge of the other bidders. "I do not mean," said his Honour, "to state a proposition so general as that there can be no fraud through the medium of persons employed by the vendors. Lord Rosslyn appears in *Conolly v. Parsons* to doubt whether there can be that species of fraud: whether, in any case, the purchaser can be said to be defrauded, merely as being drawn in through eagerness of zeal and competition with others. I do not go that length; for, if the person is employed, not for the defensive precaution, with a view to prevent a sale at an undervalue, but to take advantage of the eagerness of bidders, to screw up the price, I am not ready to say that is such a transaction as can be justified in a court of equity. Neither do I say that, if several bidders are employed by the vendor, in that case a court of equity would compel the purchaser to carry the agreement into execution; for that must be done merely to enhance the price; it is not necessary for the defensive purpose of protection against a sale at an undervalue. I leave those cases to be determined on those grounds, whenever they may occur. It is sufficient to say this is not a case of that description." It had already been decided that equity would not countenance a demand of commission for attending at an auction to enhance the price of goods (*k*); and Lord Cranworth, C., subsequently held that a vendor could not be allowed to employ more puffers than one, though limited to the same price, unless he expressly stipulated that he might (*l*). The indulgence

(*k*) *Walker v. Gascoigne*, 13 Vin. 544; *Walker v. Nightingale*, 4 Bro. P. C. 193.

(*l*) *Mortimer v. Bell*, L. R. 1 Ch. 10; 35 L. J. Ch. 25.

with which equity regarded the employment of a puffer was perhaps carried to its farthest extent in *Woodward v. Miller* (m), where a statement by the auctioneer that the sale was to be a *bonâ fide* one, and that, if there were any puffers in the room, he should hate himself, was treated as not amounting to a representation that the sale was to be without reserve.

The conflict between common law and equity was not determined, and, indeed, was little affected, by the several Auction Duty Acts. statutes (n) exempting from the auction duty (o), upon certain conditions, sales where the owner or his agent bought in the property. "Nothing," said Mr. Justice Grose in the court of King's Bench, "can be more wise than the doctrine laid down in the case of *Bezwell v. Christie*, which is not in the least impeached by the acts of parliament alluded to" (p). "The acts of parliament," said Lord Loughborough, sitting in equity, "go upon its being an usual thing, and a fair thing, for the owner to bid" (q). The explanation of this minor discrepancy is furnished by the fact that the statutes in question did not particularize all the circumstances by which parliament contemplated that those transactions would be accompanied which it intended to exempt from the auction duty (r).

Eventually the validity of the rule allowing one puffer

(m) 2 Coll. C. R. 279; 15 L. J. Ch. 6.

(n) 17 Geo. III. c. 50, s. 10; 19 Geo. III. c. 56, s. 12; 23 Geo. III. c. 37, s. 20; 42 Geo. III. c. 98, s. 1.

(o) See *ante*, p. 5.

(p) *Viz.* the statutes in question. *Howard v. Castle*, 6 T. R. 642; cf. *Wheeler v. Collier*, Moo. & M. 123.

(q) *Conolly v. Parsons*, 3 Ves. 625, 627 n.

(r) The statute 4 Geo. IV. c. 95, s. 53, permitted the trustees or commissioners of a turnpike road, putting up the tolls to let to farm, to "appoint some person to bid for the same on their account, to the intent that such tolls may not be let for less than an adequate value."

Sale of
Land by
Auction
Act, 1867.

was questioned even in equity, by Lord Cranworth (s) ; and in the year 1867 the view of the common law judges was vindicated, at least partially, by the legislature. In that year an act of parliament was passed, called "The Sale of Land by Auction Act, 1867" (t), which contained, among other provisions, the following.

Equity
assimilated
to law.

The 4th section of the act recites that "there is at present a conflict between Her Majesty's courts of law and equity in respect of the validity of sales by auction of land where a puffer has bid although no right of bidding on behalf of the owner was reserved, the courts of law holding that all such sales are absolutely illegal, and the courts of equity under some circumstances giving effect to them, but even in courts of equity the rule is unsettled," and that "it is expedient that an end should be put to such conflicting and unsettled opinions" ; and it provides that, after the passing of the act, "whenever a sale by auction of land would be invalid at law by reason of the employment of a puffer, the same shall be deemed invalid in equity as well as at law."

Reserva-
tion of
right to
bid, &c.,
to be
express.

The 5th section, after reciting that, "as sales of land by auction are now conducted, many of such sales are illegal and could not be enforced against an unwilling purchaser, and it is expedient for the safety of both seller and purchaser that such sales should be so conducted as to be binding on both parties," enacts "that the particulars or conditions of sale by auction of any land shall state whether such land will be sold without reserve or subject to a reserved price, or whether a right to bid is reserved ; if it is

(s) *Mortimer v. Bell*, L. R. 1 Ch. 10 ; 35 L. J. Ch. 25 (1865).

(t) 30 & 31 Vict. c. 48. In the act, "land" means "any interest in any messuages, lands, tenements or hereditaments, of whatever tenure ;" "puffer," "a person appointed to bid on the part of the owner ;" "agent" is defined, but only occurs in the definition.

stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person."

By the 6th section it is enacted that, "where any sale by auction of land is declared, either in the particulars or conditions of such sale, to be subject to a right for the seller to bid, it shall be lawful for the seller or any one person on his behalf to bid at such auction in such manner as he may think proper."

Rights of seller, where right to bid reserved.

These provisions are not intended by the act to affect any sale of land made under an order of a court having jurisdiction in equity (*u*).

Sales by the Court.

The Judicature Act, 1873 (*v*), provides that, where "there is any conflict between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail." It must not, however, be assumed, because the act of 1867 refers only to sales of land by auction, that it is therefore lawful to employ a puffer upon a sale by auction of goods (*w*). All the cases in which sales where a puffer had intervened were upheld by the Court of Chancery were cases relating solely to land. In *Twining v. Morrice* (*x*), a case of a sale by auction of land, at which puffers had been employed, Sir Lloyd Kenyon, M. R., is reported to have said: "With respect to bidders being employed for the vendors, I do not say the doctrine in *Bexwell v. Christie* is wrong; but everybody knows that such per-

Goods.

(*u*) 30 & 31 Vict. c. 48, s. 8. But see *post*, p. 245.

(*v*) 36 & 37 Vict. c. 66, s. 25, sub-s. 11, which came into operation on the 1st of November, 1875; 37 & 38 Vict. c. 83, s. 2.

(*w*) Mr. Maclachlan would appear to be of opinion that the equitable rule still applies to goods; Maclachl. 15.

(*x*) 2 Bro. Ch. 326 (1788). Compare the very different language of the same learned judge, as C. J., in *Howard v. Castle*, 6 T. R. 642 (1796; sale of leaseholds).

sons are constantly employed." These last words have scarcely at any time been true with reference to sales of goods by auction, at all events, so far as they may imply that every real bidder at an auction expects to find himself in competition with some clandestine representative of the seller.

Where no express reservation.

Curiously enough, the act does not say what consequences are to follow, where no statement to the effect mentioned in the 5th section is made. In such a case, the sale would, no doubt, be treated as without reserve, at any rate, as towards a purchaser without notice (*y*).

Reserved "bidding;"

The act makes a distinction between a reserved bidding and a reserved right to bid; and where property is sold "subject to a reserved bidding," it is unlawful for the vendor, without giving notice, to employ a person to bid up to a fixed reserve (*z*). Where the vendor reserves "the right to bid once;" that, both under the statute and at law, excludes the auctioneer from bidding more than once on his behalf (*a*); and it seems that such a right would be exercised by the auctioneer starting the biddings at a particular sum, or by the vendor announcing the reserved price (*b*).

"right to bid."

Where a right to bid has been reserved, the contract, it is thought, will be binding on the purchaser, although there was no contest between real bidders, and no one bid but the purchaser and the person employed to bid for the vendor (*c*); but, even under conditions of sale allowing the vendor to bid once or oftener by himself or his agent, the auctioneer may

Imaginary biddings.

(*y*) Cf. Dart, 113.

(*z*) *Gilliat v. Gilliat*, L. R. 9 Eq. 60; 39 L. J. Ch. 142; *R. v. Marsh*, 3 Y. & J. 831.

(*a*) *Parfitt v. Jepson*, 46 L. J. C. P. 529; 36 L. T. N. S. 251.

(*b*) *Per Grove, J., ib.*

(*c*) *Bowles v. Round*, 5 Ves. 508; Sugd. 10.

not, it seems, run up the price by pretending to receive from various parts of the auction-room biddings which are not in fact made (d).

Independently of the statute, when a sale is announced as "without reserve"—whether the announcement be contained in the written particulars, or be made orally by the auctioneer—that, according to all the cases, both at law and in equity, means, not merely that the property will be peremptorily sold, but that neither the vendor nor any one on his behalf will bid at the auction (e). Those words exclude, in fact, any interference by the vendor, or by those coming in under him, with the right of the public to have the property at the highest bidding; and, therefore, an agreement, the result of which was to prevent property put up to sale by auction from being sold under a fixed sum, was held to be inconsistent with conditions of sale stating that the property was offered for sale without reserve, and specific performance of a contract entered into under such circumstances was refused against a purchaser (f). Where, however, upon the sale of an estate under a decree in a suit, with liberty to the parties to bid, the auctioneer stated in the sale-room that the sale was without reserve, but that the parties were at liberty to bid, and the plaintiff in the

Sale "without reserve."

(d) *Heatley v. Newton*, 19 Ch. D. 326; 45 L. T. N. S. 455; 30 W. R. Indian 72; cf. the Indian Contract Act, s. 123: "If at a sale by auction the Contract seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer." Act.

(e) *Thornett v. Haines*, 15 M. & W. 367; 15 L. J. Ex. 230; *Warlow v. Harrison*, 29 L. J. Q. B. 14, 15; *Meadows v. Tanner*, 5 Madd. 34. If an auctioneer, not having authority from the owner to sell property without reserve, undertakes to sell it without reserve, he is liable on his undertaking; *Warlow v. Harrison*, 29 L. J. Q. B. 14, 16.

(f) *Robinson v. Wall*, 10 Beav. 61; 2 Ph. 372; 16 L. J. Ch. 401; 11 Jur. 577. The third party was to have the property for £35,000, if more should not be offered at the auction; and, as part of the arrangement, he attended at the auction and bid.

suit bid at the sale, and ran up the purchaser from £14,000 to £19,000 without any other bidder intervening, it was held that the purchaser was not entitled on that ground to be discharged from his purchase (*g*).

Reserves
favoured in
equity,

It has been said that equity has favoured the employment of a person to protect the property (*h*). A bidding is reserved upon sales by the Court (*i*); and where a person, employed to make the reserved bidding for one estate, by mistake bid for, and was declared the purchaser of, another, the Court refused to decree specific performance against him (*j*).

and usual.

How to fix
reserve.

The great majority of sales by auction are made subject to a reserved price, which the vendor generally fixes with the assistance of the auctioneer (*k*). The following observations of Malins, V.-C., in *Delves v. Delves* (*l*), may serve as a guide in determining the amount of the reserve: "I think the fair principle to be observed in fixing reserved biddings is to put a moderate price on the property, because, if they are fixed at a fancy price, which one man in the world only could be induced to give—such as (here) Lord Abergavenny might give on account of the situation of his estate—and he does not come forward, all the expense of the auction is thrown away, the parties are disappointed in the hope of receiving their money at an early period, and the very fact of the property not being sold at the auction damages future sales." A remarkable instance of the last-mentioned consequence of

(*g*) *Dimmock v. Hallett*, L. R. 2 Ch. 21; 36 L. J. Ch. 146. In *R. v. Marsh*, 1 C. & J. 406, a sale "without reserve" at which the auctioneer had made a *bond fide* bidding for himself was upheld against the purchaser.

(*h*) Dart, 195.

(*i*) See *Jervoise v. Clarke*, 1 J. & W. 389; *Shaw v. Simpson*, *ib.* 392, note. Cf. *ante*, p. 91; where also see as to trustees.

(*j*) *Malins v. Freeman*, 2 Keen, 25.

(*k*) For form of appointment of a person to bid, see *post*, p. 342.

(*l*) L. R. 20 Eq. 77, 81, 82; sale by the Court.

fixing too high a reserve is given in *Ex parte Lacey* (m), where Lord Eldon says: "In Kirton's case lately £23,000 was *bonâ fide* bid; and the estate was bought in by the agent for the vendor. Afterwards there was another sale in the Master's office; and the consequence of that circumstance deterring others from bidding was that the estate finally sold for £7,000, a depreciation contrary to all experience." It has been considered fair for an auctioneer, being also the owner, when a party comes to him and inquires whether the property will be sold for a given sum, to say that it probably will, and afterwards to fix the reserve at that sum (n).

There appears to be no objection to the auctioneer disclosing the amount of the reserve, when his doing so is likely to benefit his principal (o). As to disclosing reserve.

If an auctioneer instructed to sell is directed by his principal to use some artifice in fraud of the *bonâ fide* bidders at the sale—and such is the meaning of a direction "not to let" goods "go under" a specified sum—he may ignore the illegal direction, and sell the property for whatever it will fetch (p); and if, upon a sale stated to be without reserve—or rather, perhaps, not stated to be subject to a reserve—a bidding should be made on the part of the seller, the auctioneer ought, in self-defence, not to take such bidding, where his principal is undisclosed (q), and he will be justified in any case in rejecting such a bidding, when made *malâ fide* (r). Auctioneer may disregard fraudulent instructions and biddings.

(m) 6 Ves. 625, 628.

(n) *Flint v. Woodin*, 9 Hare, 618; 16 Jur. 719; Sugd. 10.

(o) *Else v. Barnard*, 28 Beav. 228.

(p) *Bezwel v. Christie*, 1 Cowp. 395; cf. *ante*, p. 25.

(q) *Warlow v. Harrison*, 29 L. J. Q. B. 14; cf. *ante*, p. 26, note (f).

(r) *Bezwel v. Christie*, 1 Cowp. 395.

As to purchaser damping sale.

Besides puffing, there is another kind of hindrance **to a free and open sale**, which the law discountenances: **where a person desirous of purchasing prevents others by his improper conduct from bidding against him (s).** The courts have refused to interfere against a vendor, **where the purchaser had chilled the sale through suggestions to those present in the auction-room by way of appeal to their sympathies (t);** and, again, where the property was knocked down to the purchaser below the reserved price, in consequence of the reserved bidding not being made, through the purchaser inducing a belief in the person employed to make it that he himself (the purchaser) was acting under a similar employment (u); and also where the purchaser engaged the vendor's known agent to buy an estate for him, and the sale was damped through the agent being mistaken for a puffer (v). It can hardly be doubted that, upon anything of this kind occurring, the auctioneer would have a discretion to withdraw the property.

Mock auctions.

It is perhaps unnecessary to say that transactions at mock auctions cannot be supported against a purchaser, either at law, or in equity (w).

(s) Cf. Bell, Prin. § 132; 2 Kent, Com. § 539, note (a).

(t) *Fuller v. Abrahams*, 8 B. & B. 116; 6 Moore, C. P. 316; cf. 2 Kent, Com. § 539; and *ante*, p. 121.

(u) *Mason v. Armitage*, 13 Ves. 25.

(v) *Twining v. Morrice*, 2 Bro. Ch. 326. As to *knock out sales*, see *ante*, p. 121.

(w) *Musgrove v. Robinson*, 8 C. & P. 469; 2 Moo. & R. 92. Cf. *ante*, p. 3.

CHAPTER VIII.

THE CONTRACT, AND THE FORMALITIES REQUIRED BY THE STATUTE OF FRAUDS.

"FOR prevention of many fraudulent practices which The Statute of Frauds. are commonly endeavoured to be upheld by perjury and subornation of perjury" the law has provided, in what is called the "Statute of Frauds" (a), that certain formalities shall be necessary, in some cases to the enforcement, in others to the validity, of contracts.

It was formerly doubted (b) whether sales by auction Extends to sales by auction. were within the meaning of the statute, as it was thought that the publicity of such sales ought to be sufficient to guard against fraud; and questions founded upon this doubt have at different times been brought before the courts. It is now, however, clearly settled that auction-sales, with the exception of such as are held by order of the Court (c), are within the statute, and that they, therefore, require compliance with the formalities imposed by it, as

(a) 29 Car. II. c. 3 (made perpetual by 1 Jac. II. c. 17, s. 5). It has been said that Lord Chief Justice Hale drew up this act, but Lord Mansfield is reported, in *Wyndham v. Chetwynd*, 1 Burr. 414, 418, to have doubted the accuracy of the statement.

(b) *Simon v. Metivier*, 1 Bl. R. 599.

(c) See *post*, p. 244.

much as do sales of less publicity (*d*). And it is the duty of the auctioneer to take reasonable and proper care that the contract of sale is binding under the statute (*e*).

The 4th and 17th sections of the Statute of Frauds are the only ones that have an important bearing on the subject-matter of this work.

Sect. 4. The former enacts, *inter alia*, "that no action shall be brought . . . upon any contract or (*sic*) sale (*f*) of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized."

Sect. 17. The latter section (*g*) enacts that "no contract for the sale of any goods, wares or merchandises for the price of £10 sterling or upwards shall be allowed to be good, except (1) the buyer shall accept part of the goods so sold and actually receive the same, or (2) give something in earnest to bind the bargain or in part of payment, or (3) that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

Lord Tenterden's Act.

In consequence of doubts which had arisen upon the construction of the 17th section it was enacted by 9 Geo. IV. c. 14, s. 7 (*h*), that the 17th section of the Statute of Frauds

(*d*) *Blagden v. Bradbear*, 12 Ves. 466; *Higginson v. Clowes*, 15 Ves. 516; *Kenworthy v. Schafeld*, 2 B. & C. 945.

(*e*) *Per* Blackburn, J., in *Peirce v. Corf*, L. R. 9 Q. B. 210, 214; 43 L. J. Q. B. 52.

(*f*) For remarks on these words, see Sugd. 123; Broom, C. L. 384.

(*g*) This section is numbered as the 16th in the revised edition of the statutes, but, it being better known as the 17th, the old numbering has been retained.

(*h*) Commonly called Lord Tenterden's Act.

"shall extend to all contracts for the sale of goods of the value of £10 sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

This section and the 17th section of the Statute of Frauds are to be read together, and the words "of the value" in the former must be substituted for the words "for the price" in the latter (†). The value, it seems, may be an amount to be ascertained in a manner indicated by the contract (j); nor is it material that the price agreed upon was enhanced by the fact that the vendor had to incur expense in causing the goods to be conveyed to the purchaser (k).

Before discussing the effect of the 4th and 17th sections of the Statute of Frauds, it may be observed that, while the requirements of the former section can only be satisfied by a written memorandum, those of the latter may be complied with in any one of three ways, compliance with either of the first two of which will let in parol evidence of the whole contract (l). Moreover, the "4th section does not avoid contracts not signed in the manner prescribed; it only precludes any right of action. The 17th section is stronger,

Construed together with sect. 17.

Distinctions between the 4th & 17th secs.

(i) *Harman v. Reeve*, 18 C. B. 587; 25 L. J. C. P. 257.

(j) *Watts v. Friend*, 10 B. & C. 446. "Where the parties have omitted to fix a price, it may be open to a jury to ascertain the value in dispute"—per Tindal, C. J., in *Hoadly v. M'Laine*, 10 Bing. 482, 487; and see *post*, p. 152.

(k) *Astey v. Emery*, 4 M. & S. 262.

(l) *Tomkinson v. Staight*, 17 C. B. 697; 25 L. J. C. P. 85. Provided that the contract has not been reduced into writing; see *ante*, p. 45; and provided that the contract is to be performed within a year; see notes to *Peter v. Compton*, 1 Sm. L. C. 335.

and avoids contracts not made as the section prescribes" (*m*). This distinction is important; for a parol agreement relating to land, when executed, is not invalidated by the 4th section; and in some cases a Court of Equity will decree specific performance of such a contract, when it has been partly executed (*n*).

What they
include :
Lands &c.;

"The words 'lands, tenements and hereditaments' appear to have been used by the legislature to denote a fee simple, and the words 'any interest in or concerning them' to denote a chattel interest, or some interest less than the fee simple" (*o*). A contract for a lease (*p*), or to give up possession (*q*) of a house, or for the sale of a business, with possession of the premises where it is carried on (*r*), is within the section; but a contract for the use of a graving dock, the control and management of which remains with the party letting it, is not (*s*). The fact that the party contracting to sell an interest in land has not himself an interest in it, but merely acts as broker or agent, is immaterial (*t*).

goods &c.;
tenants'
fixtures;

There is not often much difficulty in determining whether certain things are goods or not. Tenants' fixtures are considered to be goods, when severed from the freehold (*u*); and a recent case has laid down the following rule as to

(*m*) *Per* Bosanquet, J., in *Laythoarp v. Bryant*, 2 Bing. N. C. 735, 747; 2 Hodg. 25; cf. *Leroux v. Brown*, 12 C. B. 801, 825; 22 L. J. C. P. 1; 16 Jur. 1021.

(*n*) *Post*, p. 197.

(*o*) *Per* Littledale, J., in *Evans v. Roberts*, 5 B. & C. 829, 839; cf. *Smith v. Surman*, 9 B. & C. 561, 573.

(*p*) *Vaughan v. Hancock*, 3 C. B. 766.

(*q*) *Kelly v. Webster*, 12 C. B. 283; 21 L. J. C. P. 163.

(*r*) *Smart v. Harding*, 15 C. B. 652; 24 L. J. C. P. 76; *Hodgson v. Johnson*, E. B. & E. 685; 28 L. J. Q. B. 88.

(*s*) *Wells v. Kingston-upon-Hull*, L. R. 10 C. P. 402; 44 L. J. C. P. 257.

(*t*) *Horsey v. Graham*, L. R. 5 C. P. 9; 39 L. J. C. P. 58.

(*u*) *Minshall v. Lloyd*, 2 M. & W. 450, 459; *Dalton v. Whitten*, 3

growing crops (*v*) : "Where the subject-matter of the contract is growing in the land at the time of the sale, then, if, by the contract, the thing sold is to be delivered at once by the seller, the case is not within the (4th) section. Another case is where, although the thing may have to remain in the ground some time, it is to be delivered by the seller finally, and the purchaser is to have nothing to do with it, until it is severed; and that case also is not within the (4th) section. Then there comes the class of cases where the purchaser is to take the thing away himself. In such a case, where the things are *fructus industriales* (*w*), then, although they are still to derive benefit from the land after the sale, in order to become fit for delivery, nevertheless, it is merely a sale of goods, and not within the (4th) section. If they are not *fructus industriales* (*x*), then the question seems to be whether it can be gathered from the contract that they are intended to remain in the land for the advantage of the purchaser, and are to derive

Q. B. 961; but not when they are unsevered; see *post*, p. 149, and cf. *ante*, p. 63.

(*v*) *Per* Brett, L. J., in *Marshall v. Green*, 1 C. P. D. 35, 42; 45 L. J. Q. B. 153, 155.

(*w*) *I.e.* corn and other growth of the earth which is produced, not spontaneously, but by labour and industry. They can be seized by the sheriff under a *fi. fa.*, and go to the executor, and not to the heir. Wheat, potatoes, turnips &c.; *Jones v. Flint*, 10 A. & E. 753; 2 P. & D. 594; *Dunne v. Ferguson*, Hayes, 540; and also, it seems, hops; *Rodwell v. Phillips*, 9 M. & W. 501, 503, are *fructus industriales*. From the cases cited it appears that emblements, as to which see Wms. Exors. 716, come under the same rule as *fructus industriales*, which, in fact, they include. Growing crops are treated in a similar manner to fixtures in the Bills of Sale Act, 1878; see *ante*, p. 63, note (*s*).

(*x*) *E.g.* clover; *Graves v. Weld*, 5 B. & Ad. 105; mowing grass; *Crosby v. Wadsworth*, 6 East, 602; cf. *Jones v. Flint*, 10 A. & E. 753, 759 (where it was held that a contract of agistment, *i.e.* where the owner of a pasture takes in cattle to be fed, is not an interest in land, though a contract to sell the feed, to be taken by the cattle of the buyer, would be); *standing underwood*; *Scorrell v. Boxall*, 1 Y. & J. 396; *Teal v. Anty*, 2 B. & B. 99; poles or timber; growing fruit; *Rodwell v. Phillips*, 9 M. & W. 501.

benefit from so remaining ; then part of the subject-matter of the contract is the interest in land, and the case is within the (4th) section. But if the thing, not being *fructus industriales*, is to be delivered immediately, whether the seller is to deliver it, or the buyer is to enter and take it himself, then the buyer is to derive no benefit from the land, and consequently the contract is not for an interest in the land, but relates solely to the thing sold itself."

What they
do not
include :
Goods sold
for less
than 10% ;

Neither section extends to goods sold for a less price than £10 (y) ; therefore an auction-sale of these is completed by the bidding and its acceptance. And, as a separate contract arises in respect of each lot sold at an auction, these sections do not apply where several lots are knocked down at distinct times and for distinct sums to the same bidder, each of them being individually under £10, although the amount of the whole purchase-money may be much more than £10 (z), But it is otherwise, if they are knocked down to him, or subsequently treated as having been knocked down to him, at one sum or as one lot (a), or if they are so connected together that the possession of all is essential to the enjoyment of any one or more of them (b).

stocks &c. ; Nor does either section apply to contracts for the sale of

(y) Unless the agreement is not to be performed within a year, on which point see notes to *Peter v. Compton*, 1 Sm. L. C. 335.

(z) *Emmerson v. Heelis*, 2 Taunt. 38 ; *James v. Shore*, 1 Stark. 426 ; *Roots v. Lord Dormer*, 4 B. & Ad. 77 ; *Wailing v. Horwood*, 12 Jur. 48 ; cf. *Couston v. Chapman*, L. R. 2 H. L. Sc. 250, 252 ; *Lewin v. Guest*, 1 Russ. 325.

(a) Thus, where three lots of one hundred railway shares each were sold at an auction, but the bill of parcels sent to the purchaser described the transaction as a sale of "300 shares . . . £15" ; it was held that there was evidence that the contract was entire ; *Franklyn v. Lamond*, 4 C. B. 637 ; 16 L. J. C. P. 221 ; 11 Jur. 780 ; see also *Baldevy v. Parker*, 2 B. & C. 37 ; 3 D. & R. 220 ; *Champion v. Short*, 1 Camp. 52 ; *Mills v. Hunt*, 20 Wend. 431 ; *Bigg v. Whisking*, 14 C. B. 195 ; 2 C. L. R. 617.

(b) *Chambers v. Griffiths*, 1 Esp. 150 ; *Gibson v. Spurrier*, Peake, Add. Cas. 49.

foreign stock (*c*), railway scrip (*d*), or shares in a joint-stock bank (*e*) or a railway (*f*), canal navigation (*g*) or water-works company (*h*), or a mining company conducted on the cost-book principle (*i*), or of the right to remove tenants' fixtures when unsevered from the freehold (*j*). right to remove tenants' fixtures.

The requirements of the 4th and 17th sections with regard to the memorandum in writing will be examined together, the same rules, with one exception (*k*), applying equally to both.

The only difference between an agreement and a note of an agreement is that, in the one instance, a formal agreement is meant, and, in the other, something not so particular in form and technical accuracy, but still containing the essentials of an agreement (*l*). "Unless the agreement, &c."

(*c*) *Paule v. Gunn*, 4 Bing. N. C. 445; *Heseltine v. Siggers*, 1 Ex. 856; 18 L. J. Ex. 166.

(*d*) *Knight v. Barber*, 16 M. & W. 66; 16 L. J. Ex. 18.

(*e*) *Humble v. Mitchell*, 11 A. & E. 205; 3 P. & D. 141.

(*f*) *Bradley v. Holdsworth*, 3 M. & W. 422; 1 H. & H. 156; *Duncuft v. Albrecht*, 12 Sim. 189, 199; *Bowlby v. Bell*, 3 C. B. 284; *Tempest v. Küner*, 3 C. B. 249.

(*g*) *Latham v. Barber*, 6 T. R. 67. But in some cases the act of parliament constituting the company makes the shares real property, as in the case of Droitwich, River Don and River Avon Canal shares and New River shares.

(*h*) *Bligh v. Brant*, 2 Y. & C. 268; cf. *Myers v. Perigal*, 2 De G. M. & G. 599; 22 L. J. Ch. 431; *Edwards v. Hall*, 6 De G. M. & G. 74; 25 L. J. Ch. 82, decided on the Mortmain Act.

(*i*) At any rate in the absence of evidence that the shareholders take a direct interest in the freehold; *Watson v. Spratley*, 10 Ex. 222; *Powell v. Jessop*, 18 C. B. 336; *Walker v. Bartlett*, 18 C. B. 845; *Hayter v. Tucker*, 4 Kay & J. 243. But Westminster Improvement Bonds are an interest in land; *Tappin v. Lomas*, 16 C. B. 145.

(*j*) *Lee v. Gaskell*, 1 Q. B. D. 700; 45 L. J. Q. B. 540; cf. *Pinner v. Arnold, Tyrw. & Gr.* 1. But so long as the tenant has a right to remove them, they may be seized by the sheriff as goods; *Hallen v. Runder*, 1 C. M. & R. 266, 275; 3 Tyrw. 959; *Minshall v. Lloyd*, 2 M. & W. 451, 459; and when severed they are goods; *ante*, p. 146.

(*k*) See *post*, p. 152.

(*l*) *Williams v. Lake*, 29 L. J. Q. B. 1, 3; 2 R. & E. 349; *Vandenberg v. Spooner*, L. R. 1 Ex. 316.

The essentials of the agreement.

The essentials which must appear on the agreement are : who are the contracting parties ; the subject-matter of the contract, comprising the promise and the consideration ; and the consent of the parties to the terms of the contract (*m*).

The parties.

Both parties must be specified, either by name or by a sufficient description (*n*). Where there is a sufficient description of the vendor, it is not necessary that his name should be inserted in the agreement (*o*) ; but, unless there is good reason to the contrary, it is, as a rule, advisable, in order to avoid any question as to the sufficiency of the description, to insert his name, if it does not appear on the particulars (*p*). Simply signing as agent for "my client" (*q*), "my principal," "my friend" (*r*), or "the vendor" (*s*), is not, by itself, a sufficient description of the party alluded to. The following descriptions are, however, sufficiently definite to admit parol evidence to identify the party to whom they refer : "The executor of" A. B. (*t*) ; "a trustee selling under a trust for sale" (*u*) ; "the owner ;" "the proprie-

(*m*) *Wain v. Warlters*, 5 East, 10 ; 2 Sm. L. C. 241 ; *Laythoarp v. Bryant*, 2 Bing. N. C. 735, 742 ; 2 Hodg. 25 ; *Milnes v. Gery*, 14 Ves. 400, 406 ; *Roberts v. Tucker*, 3 Ex. 632 ; *Saunders v. Wakefield*, 4 B. & Ald. 595. In the case of a guarantee, however, the consideration need not now be stated ; see 19 & 20 Vict. c. 97, s. 3.

(*n*) *Williams v. Lake*, *ubi sup.* ; *Williams v. Jordan*, 6 Ch. D. 517 ; 46 L. J. Ch. 681 ; *Donnison v. People's Café Co.*, W. N. 1881, 107.

(*o*) *Hood v. Lord Barrington*, L. R. 6 Eq. 218, 221 ; *Beer v. London & Paris Hotel Co.*, L. R. 20 Eq. 412, 427.

(*p*) See Dart, 218, commenting on the fact that the vendor's name is seldom disclosed.

(*q*) *Skelton v. Cole*, 1 De G. & J. 587.

(*r*) *Rositer v. Miller*, 3 App. Cas. 1124, 1141 ; 48 L. J. Ch. 10.

(*s*) *Potter v. Duffield*, L. R. 18 Eq. 4 ; 43 L. J. Ch. 472.

(*t*) *Hood v. Lord Barrington*, L. R. 6 Eq. 218.

(*u*) *Catling v. King*, 5 Ch. D. 660 ; 46 L. J. Ch. 384 ; *Taylor v. Salmon*, W. N. 1881, 102.

tor" (*v*); "the mortgagee" (*w*); "the company in possession of the premises" (*x*). If the name or a sufficient description of the vendor does not appear on the agreement, the auctioneer runs the risk of himself incurring liability as principal, if the vendor refuse to perform the contract (*y*).

The promise must be stated. Where the agreement for a lease of certain premises did not state the intended duration of the term (*z*), or the day from which it was to commence (*a*), or the time at which possession was to be given (*b*), specific performance was refused. But descriptions such as "Mr. O.'s house" (*c*), "the intended new public-house at Putney" (*d*), "property purchased . . . at Sun Inn, Pinxton" (the date being mentioned) (*e*), "your wool" (*f*) are sufficiently definite to render parol evidence admissible to identify the property.

The price to be given must appear (*g*) or be capable of being ascertained with certainty. A mere receipt for the

The promise.

The consideration.

(*v*) *Sale v. Lambert*, L. R. 18 Eq. 1; 43 L. J. Ch. 470; cf. *Thomas v. Brown*, 1 Q. B. D. 714; 45 L. J. Q. B. 811.

(*w*) *Rossiter v. Miller*, *ubi supra*; and see *Shardlow v. Cotterell*, 18 Ch. D. 280, 292; 50 L. J. Ch. 613, 618.

(*x*) *Commins v. Scott*, L. R. 20 Eq. 11; 44 L. J. Ch. 563; *Beer v. London & Paris Hotel Co.*, L. R. 20 Eq. 412.

(*y*) Cf. *ante*, p. 129.

(*z*) *Fitzmaurice v. Bayley*, 9 H. L. 78.

(*a*) *Nesham v. Selby*, L. R. 7 Ch. 406; 41 L. J. Ch. 551; *Marshall v. Berridge*, 19 Ch. D. 233; 30 W. R. 93.

(*b*) *Donnison v. People's Café Co.*, W. N. 1881, 107.

(*c*) *Ogilvie v. Foljambe*, 3 Mer. 53; cf. *Cowley v. Watts*, 22 L. J. Ch. 591; 17 Jur. 172.

(*d*) *Wood v. Scarth*, 2 Kay & J. 33.

(*e*) *Shardlow v. Cotterell*, 18 Ch. D. 280; 50 L. J. Ch. 613. In this case no other property was being sold. Cf. cases cited in notes (*x*) & (*y*) *ante*, p. 70.

(*f*) *Macdonald v. Longbottom*, 1 E. & E. 977; 29 L. J. Q. B. 256; cf. *M'Collin v. Gilpin*, 6 Q. B. D. 516; 29 W. R. 408; 44 L. T. N. S. 914.

(*g*) *Elmore v. Kingscote*, 5 B. & C. 583; 8 D. & R. 343; *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52.

deposit which does not state the proportion the deposit bears to the price is not enough (*h*). But an agreement to sell at a fair valuation may be enforced (*i*); and an agreement for sale at a specified price and a fixed percentage on any profits that might be realized, should the purchaser resell within a given time, was held, the purchaser not having re-sold within the time limited, to be a valid contract to purchase at the price specified (*j*). It is not necessary that the mode of payment should be mentioned (*k*).

(Distinction between 4th & 17th secs. as to price.)

Regarding the price, a distinction has been drawn between the 4th and 17th sections. The word "bargain" in the latter is not so strictly interpreted as the word "agreement" in the former, so far as the price is concerned. Thus, where there is no actual agreement as to price, the note of the "bargain," though silent as to price, is sufficient, the law importing a promise to pay a reasonable price (*l*). But where the price is fixed, it becomes a part of the "bargain" and must appear in writing; and parol evidence is admissible to show that a price was actually agreed upon, in order to establish the insufficiency of a memorandum which is silent as to price (*m*).

The consent.

The note or memorandum must show an agreement to the terms of the contract charged against the party; and a memorandum is not sufficient which adds a material term to the agreement charged, or contradicts or qualifies it in a material particular (*n*); as, where a letter admitting a sale

(*h*) *Blagden v. Bradbear*, 12 Ves. 466.

(*i*) *Dart*, 221; *Leake*, 1135; *Milnes v. Gery*, 14 Ves. 400, 407; cf. *ante*, p. 93.

(*j*) *Langstaff v. Nicholson*, 25 Beav. 160.

(*k*) *Sarl v. Bourdillon*, 1 C. B. N. S. 188; 26 L. J. C. P. 78.

(*l*) *Hoadley v. M'Laine*, 10 Bing. 482, 487; cf. *ante*, p. 145, note (*j*).

(*m*) *Benj.* 184.

(*n*) *Leake*, 271.

of goods asserts a condition as to their quality (*o*), or that they were bought by sample (*p*).

The memorandum need not be signed by both parties to the contract : the signature of the party to be charged alone is sufficient (*q*) ; and signing a surname (*r*), or initials, only (*s*), or in pencil (*t*), seems to be enough. Nor must the signature necessarily be written ; it may be printed or stamped (*u*), or be signified by a mark (*v*). The following have been held to be sufficient signatures of the party to be charged : “ I, J. C., agree to sell ” (*x*) ; “ A. B. agrees with J. R. B., ” in J. R. B.’s (the defendant’s) writing (*y*) ; “ Sold J. D. ” (*z*) ; “ Messrs. E., bought of ” (*a*). “ If a party or principal or person to be bound signs as, what he cannot be, a witness, he cannot be understood to sign otherwise than as principal ” (*b*). But where J. N., an auctioneer’s clerk,

“ And signed by the party to be charged.”

Signature “ as witness.”

(*o*) *Smith v. Surman*, 9 B. & C. 561.

(*p*) *Archer v. Baynes*, 5 Ex. 625.

(*q*) *Laythoarp v. Bryant*, 2 Bing. N. C. 735 ; 2 Hodg. 25 ; *Seton v. Slade*, 7 Ves. 284 ; *Reuss v. Picklesley*, L. R. 1 Ex. 342, 352 ; 35 L. J. Ex. 218.

(*r*) As : “ Mr. A. begs to inform &c. ” ; *Lobb v. Stanley*, 5 Q. R. 574.

(*s*) *Phillimore v. Barry*, 1 Camp. 513 ; *Jacob v. Kirk*, 2 Moo. & R. 221 ; *Sweet v. Lee*, 3 Man. & G. 452 ; cf. *Hubert v. Moreau*, 2 C. & P. 528 ; 12 Moore, 216 ; notes to *Wain v. Warlters*, 2 Sm. L. C. 241 ; Sugd. 144.

(*t*) *Lucas v. James*, 7 Hare, 410, 419 ; provided it was intended as a signature ; cf. *In the goods of Adams*, L. R. 2 P. & D. 367 ; 41 L. J. P. 31.

(*u*) Provided it be shown to have been printed or stamped by the party or by his authority, and appropriated to the particular contract ; *Schneider v. Norris*, 2 M. & S. 286 ; *Saunderson v. Jackson*, 2 B. & P. 238 ; *Bennett v. Brumfitt*, L. R. 3 C. P. 28 ; 37 L. J. C. P. 25.

(*v*) Whether the party be able to read and write or not ; *Baker v. Dening*, 8 A. & R. 94.

(*x*) *Knight v. Crockford*, 1 Esp. 190.

(*y*) *Bleakley v. Smith*, 11 Sim. 150 ; cf. *Proper v. Parker*, 1 R. & Myl. 625.

(*z*) In J. D.’s writing ; *Johnson v. Dodgson*, 2 M. & W. 653.

(*a*) Written by Messrs. E.’s agent ; *Durrell v. Evans*, 1 H. & C. 174 ; 6 H. & N. 660 ; 31 L. J. Ex. 337 ; 9 Jur. N. S. 104 ; 7 L. T. N. S. 97 ; 10 W. R. 665.

(*b*) Per Lord Eldon, in *Coles v. Trecothick*, 9 Ves. 234, 251 ; *Welford v. Beasley*, 1 Ves. Sen. 7 ; 3 Atk. 503.

signed the memorandum of the contract : "Witness J. N." and signed the receipt for the deposit (being authorized by the purchaser to do so) : "For Mr. M. (the purchaser), J. N.," it was held that, even if there had been proof of his being agent to the vendor, the signature was not sufficient to bind the vendor, as it merely attested the signature of the purchaser (*c*). And where an agreement contained the names of the parties in the commencement, and concluded : "As witness our hands," without being followed by any name or signature, this was held to be insufficient (*d*).

"Or some other person &c." The authority to sign may be written, verbal or implied (*e*). At a sale by private contract (*f*) the auctioneer is agent for the vendor only (*g*), but at a sale by auction he has an implied authority to sign for both parties (*h*). How far in the latter case his clerk has a similar authority

(*c*) *Gosbell v. Archer*, 2 A. & E. 500, where Lord Denman, C. J., criticized the *dictum* of Lord Eldon, quoted in the text. But see Sugd. 143, where Lord Eldon's *dictum* is maintained to be correct.

(*d*) *Hubert v. Treherne*, 3 Man. & G. 743; *Hubert v. Turner*, 4 Sco. N. R. 486.

(*e*) See *ante*, p. 21.

(*f*) He cannot so sell without special authority; *ante*, p. 27.

(*g*) *Mews v. Carr*, 1 H. & N. 484; 26 L. J. Ex. 39.

Brokers. (*h*) See *ante*, p. 20. A broker, like an auctioneer, acts as agent for both parties; *Rucker v. Cammeyer*, 1 Esp. 105. The mode in which he usually effects a contract is by the delivery to his principals of what are called bought and sold notes, the bought note being sent to the buyer, the sold note to the seller. These notes should contain the names of both the contracting parties, the quantity of the article bought or sold, and the price, if agreed upon. For forms, see Part II., *post*, p. 378. Where the broker has made and signed an entry of the contract in his book, this will be good evidence of the contract to satisfy the Statute of Frauds in cases where no bought and sold notes have been delivered, or where they disagree. But if there is a material difference between the bought and sold notes, and no entry has been made and signed, then there is no binding contract. See Russ. Merc. Ag. 4, citing, among others, the following cases : *Thornton v. Charles*, 9 M. & W. 802; *Pitts v. Beckett*, 13 M. & W. 743, 746; *Seiewright v. Archibald*, 17 Q. B. 103; 20 L. J. Q. B. 529; and see Benj. 203 *et seq.*; and *Heyworth v. Knight*, 17 C. B. N. S. 298; 33 L. J. C. P. 298.

Bought and sold notes.

appears to be doubtful. Hullock, B., in *Henderson v. Henderson* ^{*v. Barnewall*} (i), is reported to have said: "An auctioneer's clerk who writes down the name of the buyer in his presence is the agent of both parties." But this *dictum* seems not to have met with the approval of Patteson, J., in a subsequent case (j); and in *Peirce v. Corf* (k) Blackburn, J., says: "I take it as quite clear that the auctioneer's clerk has no authority to sign by general custom; although, as *Bird v. Boulter* (l) decided, there may be special circumstances to show that an auctioneer's clerk had authority to sign. Where the bidder, that is, the person to be charged, by word or sign authorizes the auctioneer's clerk to sign on his behalf, he makes him his agent to sign, although, by the general custom, the auctioneer's clerk would not be the bidder's agent." In the case of *Bird v. Boulter*, mentioned above, the clerk, as the hammer fell, called out the name of the purchaser, and if the purchaser assented, made an entry accordingly in the sale-book. With regard to the lot in question in the case, the auctioneer having named the defendant as purchaser, the clerk said: "Mr. B., it is your wheat;" whereupon the defendant nodded, and the clerk made the entry in his sight, he being then within a distance of three yards; and the purchaser was held to have constituted the clerk his agent. Although, in general, the clerk would appear not to have authority to bind the vendor by signing for him (m), perhaps the presence and direction

Peirce v. Corf.

Bird v. Boulter.

(i) 1 Y. & J. 387, 389; and see Sugd. 147, where it is said that the clerk who takes down the biddings openly is considered the agent of both the seller and the purchaser.

(j) *Bird v. Boulter*, 4 B. & Ad. 443, 446; 1 N. & M. 313.

(k) L. R. 9 Q. B. 210, 214; 43 L. J. Q. B. 52; (decided in 1874), where the clerk had signed the auctioneer's sale-book for the purchaser. But the case was not decided on that ground.

(l) *Ubi sup.*

(m) See *ante*, p. 29.

of the auctioneer would suffice to invest him with such authority. For, as observed by Taunton, J., in *Bird v. Boulter* (n), "it is not necessary to suppose that the vendor rested a particular confidence in the auctioneer for the purpose of putting down the names in the sale-book. He may be taken to have constituted that person his agent for the making of such entries whom the auctioneer might choose to appoint." And, according to Mr. Dart, the vendor by the appointment of the auctioneer impliedly authorizes the clerk of the latter to bind him by signing as his agent (o). But on a sale by private contract the clerk's authority is not so readily implied. In *Coles v. Trecothick* (p), Lord Eldon is reported to have said: "The doctrine is very dangerous indeed that, if an auctioneer is authorized to sell, all his clerks, when he goes out of town, are, in consequence of any usage in that business, agents for the person who authorized him." In that case the auctioneer had informed the vendor that he was in the habit of allowing his clerks to sign contracts, witness instruments, and conduct his business, and as the vendor had expressed himself satisfied, he was held bound by the signature of one of two clerks named to him, who had signed as his agent.

*Coles v.
Trecothick.*

Solicitor.

A solicitor has no implied authority to bind his client by signing the latter's name (q); but the conduct of the parties is evidence to prove such authority (r). Before a solicitor can

(n) *Ubi sup.*

(o) Dart, 181. At sales of numerous lots the auctioneer's clerk frequently signs the contract for the vendor, while the auctioneer himself is engaged in selling other property.

(p) 9 Ves. 234, 250.

(q) *Smith v. Webster*, 3 Ch. D. 49; 45 L. J. Ch. 528; *Forster v. Rowland*, 7 H. & N. 103; 7 Jur. N. S. 998; cf. *Earl of Glengal v. Barnard*, 1 Keen, 769, 787.

(r) *Taylor v. Salmon*, W. N. 1881, 102.

act as agent of both parties, they must both have intended that he should, and have authorized him to, so act (*s*).

One party to a contract cannot act as agent for the other so as to bind him by signing his name; therefore an auctioneer cannot sue in his own name upon a contract which he himself has signed as agent for the buyer (*t*). One party cannot sign for the other.

The principal can sue and be sued, although the agent signed in his own name (*u*); but, as a rule, an agreement entered into by an agent should, in order to avoid any question as to personal liability, be made and signed by him expressly in the character of agent (*v*). How agent should sign.

It is not necessary that the note or memorandum appear on one document (*w*); and the insertion of the signature in any part of the writing is sufficient, so long as it is done in such a manner as to authenticate the whole instrument (*x*). The agreement may be gathered from several documents;

"When it is proposed to prove the existence of a contract by several documents, it must appear upon the face of the instrument signed by the party to be charged that reference is made to another document, and this omission cannot be supplied by verbal evidence. If, however, it appears from the instrument itself that another document is referred to, that document may be identified by verbal evidence" (*y*).

(*s*) For, generally speaking, the agent of the seller cannot act as agent of the buyer; see *ante*, p. 22, note (*o*); cf. *Mews v. Carr*, 1 H. & N. 484; 26 L. J. Ex. 39.

(*t*) *Wright v. Dannah*, 2 Camp. 203; *Farebrother v. Simmons*, 5 B. & Ald. 333; *Sharman v. Brandt*, L. R. 6 Q. B. 720; 40 L. J. Q. B. 312; *aliter*, where his clerk has signed as agent for the purchaser; *Bird v. Boulter*, 4 B. & Ad. 443; 1 N. & M. 313.

(*u*) *Post*, p. 206.

(*v*) *Dart*, 185; cf. *post*, p. 208.

(*w*) *Cave v. Hastings*, 7 Q. B. D. 125; 50 L. J. Q. B. 575.

(*x*) *Caton v. Caton*, L. R. 2 H. L. 127, 142; 36 L. J. Oh. 886; *Jones v. Victoria Graving Dock Co.*, 2 Q. B. D. 314, 323; 46 L. J. Q. B. 219.

(*y*) *Per* Thesiger, L. J., in *Long v. Millar*, 4 C. P. D. 450, 456; 48 L. J. Q. B. 596, where Bramwell, L. J., puts the following case: "Suppose that A. writes to B., saying that he will give £1000 for B.'s

*Long v.
Millar.*

Where the defendant signed the following receipt: "Received of Mr. George Long the sum of thirty-one pounds, as a deposit on the purchase of three plots of land at Hammersmith," it was held that the word "purchase" referred to some agreement to purchase, and that parol evidence was admissible to identify the agreement referred to, which was an agreement signed by the plaintiff only (z).

*Nene Valley
Commissioners
v. Dunkley.*

In another case, the agents for the parties signed a contract for the sale of certain property, no plan being referred to in the contract, and at the same time they signed the following memorandum written upon a plan of the property: "Plan of property sold to and purchased by D. (the defendant), 23rd October, 1874. N.B. The property included in the purchase is edged with red colour;" it was held that the plan sufficiently referred to the contract to permit the two to be read together (a). And an auctioneer's receipt for the deposit will be sufficient, if it shows, either by itself, or by reference to something else, what the agreement is (b). A letter written after a sale by auction, acknowledging the sale and referring to the conditions, will incorporate the conditions, so as to constitute a memorandum sufficient to charge the party writing the letter, although he did not

estate, and at the same time states the terms in detail, and suppose that B. simply writes back in return: 'I accept your offer.' In that case there may be an identification of the documents by parol evidence; and it may be shown that the offer alluded to by B. is that made by A., without infringing the Statute of Frauds, s. 4." Cf. *Rossiter v. Miller*, 3 App. Cas. 1124; 48 L. J. Ch. 10; *Bonnewell v. Jenkins*, 8 Ch. D. 70; 47 L. J. Ch. 758.

(z) *Long v. Millar*, *ubi sup.*; cf. *Shardlow v. Cotterell*, 18 Ch. D. 280; 50 L. J. Ch. 613.

(a) *Nene Valley Commissioners v. Dunkley*, 4 Ch. D. 1.

(b) *Blagden v. Bradbear*, 12 Ves. 466, 471; *Wood v. Midgley*, 2 Sm. & G. 116, where the auctioneer's receipt was held binding on the purchaser, although it stated that the terms of the contract were "to be expressed in an agreement to be signed as soon as prepared"; the agreement referred to being merely a fair copy of a draft already agreed to.

sign the conditions separately (c). Nor is it material that the letter was addressed to the agent of the party writing it (d). Where an auctioneer wrote the initials of the name of an agent, acting for an undisclosed principal, opposite the lots purchased by him, together with the price, in the printed catalogue, and the principal subsequently wrote to the agent recognizing the purchase, the entry and the letter were held to constitute a good memorandum (e). Even a refusal in writing to perform the contract may be sufficient, provided it does not dispute the terms (f).

But the memorandum, to be a good memorandum, must be signed in such a manner that, when the auctioneer attaches his signature, it authenticates the contract as to the price and the conditions of sale (g). Signing the purchaser's name on the catalogue (h), or in the sale-book (i), is not sufficient, if the conditions of sale are not annexed to, or embodied or referred to in, the catalogue or sale-book. And if the conditions have during the progress of the sale become detached from the particulars, the signing of the latter during the separation will be unavailing (j). Where a mare, numbered lot 49 in the catalogue and conditions of sale, was put up by auction, and the auctioneer entered in his sale-book the number of the lot, together with a description of the mare, the name of the purchaser, and the price

but they
must refer
to one
another.

Peirce v. Corf.

(c) *Dobell v. Hutchinson*, 3 A. & E. 355; 5 N. & M. 251; 1 H. & W. 394.

(d) *Gibson v. Holland*, L. R. 1 C. P. 1; 35 L. J. C. P. 5.

(e) *Phillimore v. Barry*, 1 Camp. 513.

(f) *Jackson v. Lowe*, 1 Bing. 9; 7 Moore, 219; *Bailey v. Sweeting*, 9 C. B. N. S. 848; 30 L. J. C. P. 150; *Buxton v. Rust*, L. R. 7 Ex. 279; 41 L. J. Ex. 173.

(g) *Per Blackburn, J.*, in *Peirce v. Corf*, L. R. 9 Q. B. 210, 214; 43 L. J. Q. B. 52; cf. *Williams v. Jordan*, 6 Ch. D. 517; 46 L. J. Ch. 681.

(h) *Hinde v. Whitehouse*, 7 East, 558, 569.

(i) *Rishton v. Whatmore*, 8 Ch. D. 467; 47 L. J. Ch. 629.

(j) *Kenworthy v. Schofield*, 2 B. & C. 945.

bid, and after the sale the purchaser wrote to the auctioneer as follows: "I herewith return the grey mare, lot 49, bought at your sale this day," it was held that there was no contract, as the sale-book contained no reference to the catalogue and conditions, and that, although the purchaser's letter might be taken to show that he had bought subject to the conditions in the catalogue, it contained no reference to the sale-book, and was defective as a memorandum, the price not being stated (*k*).

The usual mode of complying with the statute has already been stated (*l*). It is now proposed to consider the provisions of the 17th section relating to acceptance and part payment.

"Accept and actually receive the same."

"In order to satisfy the statute, there must be a delivery of the goods by the vendor, with an intention of vesting the right of possession in the vendee, and there must be actual acceptance by the latter, with an intention of taking to the possession as owner" (*m*). The acceptance may be prior to the actual receipt, and need not be contemporaneous with or subsequent to it (*n*); but if the buyer refuse to receive the goods, he cannot be charged with the contract, whatever may have been his motive in refusing (*o*). It is sufficient if the buyer accept and receive a part of the goods sold.

Acceptance of part.

(*k*) *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52.

(*l*) *Ante*, p. 127.

(*m*) *Per cur.* in *Phillips v. Bistolli*, 2 B. & C. 511, 513; and see *Holmes v. Hoskins*, 9 Ex. 753; *Farina v. Horne*, 16 M. & W. 119, 123; *Smith v. Hudson*, 6 B. & S. 431; 34 L. J. Q. B. 145; *Hardman v. Bellhouse*, 9 M. & W. 596.

(*n*) *Cusack v. Robinson*, 1 B. & S. 299; 30 L. J. Q. B. 261; *Morton v. Tibbett*, 15 Q. B. 429; 19 L. J. Q. B. 382, where it was held that there might be an acceptance and receipt within the statute without the buyer having done anything to preclude him from contending that the goods did not correspond to the contract; but on this point cf. *Hunt v. Hecht*, 8 Ex. 814; 22 L. J. Ex. 293.

(*o*) *Baldev v. Parker*, 2 B. & C. 37; 3 D. & R. 220; *Phillips v. Bistolli*, 2 B. & C. 511.

Where goods are sold by sample, a delivery to, and acceptance by, the purchaser, of a sample, will bind him, if it be delivered and accepted as a part of the thing purchased (*p*) ; but if given merely as a specimen of the article sold, or if taken only for the purpose of examining the quality, it will not bind him (*q*). If there be a joint and entire contract for distinct articles, acceptance and receipt of one article is sufficient (*r*).

The delivery may be constructive ; for, "when goods are ponderous and incapable . . . of being handed over from one to another, there need not be an actual delivery ; but it may be done by that which is tantamount, such as the delivery of the key of a warehouse in which the goods are lodged, or by delivery of other *indicia* of property" (*s*) ; and this is evidence of acceptance also (*t*). If a purchaser deal with goods, left in the possession of the vendor, as his own, delivery and acceptance may be inferred by the jury (*u*) ; as, where trees standing on the vendor's land were sold for immediate removal, and the buyer cut down some and resold certain portions, although there was no actual removal from the land (*v*). If the goods are in the custody of a third party, *e. g.*, a dock company, the receipt of a delivery order on such third party is not a sufficient acceptance by the purchaser, unless such third party by

Constructive delivery and acceptance.

(*p*) *Hinde v. Whitehouse*, 7 East, 558 ; *Kilnitz v. Surry*, 5 Esp. 267.

(*q*) *Talver v. West*, Holt. N. P. 178 ; *Cooper v. Elston*, 7 T. R. 14.

(*r*) *Bigg v. Whisking*, 14 C. B. 195 ; 2 C. L. R. 617 ; *Scott v. Eastern Counties Ry. Co.*, 12 M. & W. 33 ; cf. *ante*, p. 148.

(*s*) *Per Lord Kenyon, C. J.*, in *Chaplin v. Rogers*, 1 East, 192, 194.

(*t*) *Elmore v. Stone*, 1 Taunt. 453.

(*u*) *Lillywhite v. Devereux*, 15 M. & W. 285 ; *Kershaw v. Ogden*, 3 H. & C. 717 ; 34 L. J. Ex. 159 ; *Marvin v. Wallis*, 6 E. & B. 726 ; 25 L. J. Q. B. 369 ; *Castle v. Swoorder*, 6 H. & N. 828 ; 30 L. J. Ex. 310.

(*v*) *Marshall v. Green*, 1 C. P. D. 35 ; 45 L. J. C. P. 153.

Salter v.
Woollams.

accepting the order assents to holding the goods as his agent (*w*). Where two ricks of hay were sold by auction under a distress for rent, and the conditions provided that they should be removed by the purchaser at his own expense within a week, but the auctioneers obtained from the tenant a written consent, which was endorsed on the conditions and read in the auction-room, for the hay to remain on his premises for a longer period, and two days after the sale gave to the purchaser a written order addressed to the tenant and directing him to permit its removal, which he refused to do ; it was held that the purchaser could not sue for the purchase-money which he had paid at the sale, as the hay had been delivered into his possession, the permission given by the tenant amounting to an attornment from the tenant to the purchaser (*x*).

Delivery to
carrier.

Delivery to a particular carrier or particular wharfinger named by the buyer is not by itself a sufficient compliance with the statute (*y*) ; yet it may be sufficient, if the purchaser deal with the goods as his own, as, by reselling them or altering their destination, although he have not actually received them (*z*).

Restrictions to the
rule.

But there can be no acceptance and receipt so long as the

(*w*) *Bentall v. Burn*, 3 B. & C. 423. And an acceptance may be presumed, if the purchaser, knowing that the goods are lying at his disposal, does not within a reasonable time notify to the seller his refusal of them; *Bushell v. Wheeler*, 15 Q. B. 443 ; but see *Norman v. Phillips*, 14 M. & W. 277.

(*x*) *Salter v. Woollams*, 3 Sco. N. R. 65.

(*y*) *Hanson v. Armitage*, 5 B. & Ald. 557 ; *Meredith v. Meigh*, 2 E. & B. 364 ; 22 L. J. Q. B. 401 ; *Hart v. Bush*, E. B. & E. 494 ; 27 L. J. Q. B. 271 ; *Norman v. Phillips*, 14 M. & W. 277 ; *Smith v. Hudson*, 6 B. & S. 431 ; 34 L. J. Q. B. 145.

(*z*) *Morton v. Tibbett*, 15 Q. B. 428 ; 19 L. J. Q. B. 382. The keeping and dealing with a bill of lading may be equivalent to receipt and acceptance of the property itself ; *Currie v. Anderson*, 2 E. & E. 592 ; 29 L. J. Q. B. 87.

vendor has a lien upon the goods (a). Where at a sale by auction a lot was knocked down to the highest bidder and delivered to him immediately, but he, after retaining it three or four minutes, declined to keep it; it was held that there was no delivery of possession, as the owner could not be presumed to have parted with his lien in the face of a condition requiring a deposit (b). If some act remains to be done by the purchaser which must necessarily precede delivery, as, the selection and marking of timber, such act must be done, before there can be a receipt (c). And if the goods sold are not specific and ascertained, the purchaser is entitled to keep them for a reasonable time for the purpose of examining them and of seeing if they answer the description given of them; but if he retain them beyond a reasonable time, without signifying his intention to reject them, he may be presumed to have accepted them (d).

"Earnest" implies something given by the buyer to the seller (e). The North of England custom of "striking a bargain," by the buyer drawing a shilling across the hand of the seller and returning the money to his own pocket, is not sufficient to bind the bargain (f). The distinction between earnest and part payment appears to be that the former is given at the time of the bargain, so as to bind it, while the latter may be given subsequently, provided it be given before action brought (g). The amount is imma-

"Or give something in earnest," &c.

(a) *Bill v. Bament*, 9 M. & W. 36, 41; *Carter v. Toussaint*, 5 B. & Ald. 855; *Dixon v. Yates*, 5 B. & Ad. 313.

(b) *Phillips v. Bistolli*, 2 B. & C. 511.

(c) *Acraman v. Morrice*, 8 C. B. 449.

(d) *Curtis v. Pugh*, 10 Q. B. 111; cf. *Hunt v. Hecht*, 8 Ex. 814; 22 L. J. Ex. 293; *Grimoldby v. Wells*, L. R. 10 C. P. 391; 44 L. J. C. P. 203.

(e) *Rosc.* 502; e.g. a ring; *Sugd.* 50.

(f) *Blenkinsop v. Clayton*, 7 Taunt. 597.

(g) See 2 St. Com. 69, n.; *Walker v. Nussey*, 16 M. & W. 302, 305.

terial (*h*) ; but it must be a part of the price, and not a mere pledge. A pecuniary deposit upon a purchase is a part payment (*i*) ; and so would be the delivery of a bill of exchange or promissory note on account or in payment of the price of goods sold (*j*).

Admissibility of parol evidence, where no written contract.

Eden v. Blake.

If the subject-matter of the sale is not within the statute, or if some act has been done whereby the necessity for a written memorandum is obviated, and there is in fact no written contract, parol evidence is admissible to show on what terms the parties contracted. In *Eden v. Blake* (*k*) the printed catalogue described a dressing-case as having silver fittings, but before the sale the auctioneer stated publicly from his box, in the hearing of the defendant, that the catalogue was incorrect, and that the fittings were plated. In an action against the highest bidder for the price of the dressing-case, which he had purchased for less than £10, parol evidence of the auctioneer's statement was admitted, the contract not having been reduced into writing.

Where written contract.

When the contract has been reduced into writing, whether writing was necessary or not, parol evidence is inadmissible to vary its terms (*l*) ; but such evidence is admissible to prove the date at which it was made (*m*) ; to ascertain and identify the parties (*n*), and the subject-matter (*o*), provided

(*h*) *Bach v. Owen*, 5 T. R. 409.

(*i*) *Ockenden v. Henly*, E. B. & E. 485, 493 ; 27 L. J. Q. B. 361, 363 ; 4 Jur. N. S. 999.

(*j*) *Griffiths v. Owen*, 13 M. & W. 58, 61.

(*k*) 14 M. & W. 614 ; 14 L. J. Ex. 194. Such evidence would not have been admitted, if the auctioneer had signed the purchaser's name in a book referring to the catalogue.

(*l*) *Goss v. Lord Nugent*, 5 B. & Ad. 58 ; *Noble v. Ward*, L. R. 2 Ex. 135 ; *Knight v. Barber*, 16 M. & W. 69 ; 16 L. J. Ex. 18 ; and see *ante*, pp. 45, 46.

(*m*) *Hall v. Cazenove*, 4 East, 477 ; *Reffell v. Reffell*, L. R. 1 P. & D. 139 ; 35 L. J. P. 121.

(*n*) *Ante*, p. 150.

(*o*) *Ante*, p. 151.

they are sufficiently described ; to explain the intention of the parties as to the meaning of the terms, for instance, where goods are sold "complete," to show what was to be done to the goods to render them complete (*p*) ; and for the purpose of showing that the contract was made subject to a common usage or custom of trade, provided such usage or custom is consistent with the terms of the contract (*q*) ; or that a special and technical meaning is to be given to the words used. Where an auctioneer claimed under a written contract certain commission upon the sale of an estate, "if sold by auction or within two months after," and a sale of the estate was effected within two calendar months, though not within two lunar months, after the auction, the court held that "month" denoted at law a lunar month, unless the context showed that the parties intended a calendar month, but that evidence would have been admissible to show that, according to the usage of auctioneers, a "month" signifies a calendar month (*r*). And in cases where writing is not necessary, if it appears upon the face of the writing that it was not intended to contain all the terms of the agreement, parol evidence is admissible to prove what were the terms of the contract ; thus, a mere informal receipt given and accepted on the sale of a horse was held not to exclude parol evidence of a warranty given at the sale (*s*). Such evidence is, moreover, admissible, by way of defence, to show that one of the terms, as that the

(*p*) *Sarl v. Bourdillon*, 1 C. B. N. S. 188 ; 26 L. J. C. P. 78.

(*q*) *Leake*, 204 *et seq.* ; *Browne v. Byrne*, 3 E. & B. 703 ; 23 L. J. Q. B. 313 ; *Myers v. Sarl*, 3 E. & B. 306 ; 30 L. J. Q. B. 9 ; *Spicer v. Cooper*, 1 Q. B. 424, where parol evidence was admitted to explain that "sold 18 pockets Kent hops at 100s." was a usual way in the trade of expressing that the sale was at £5 per cwt.

(*r*) *Simpson v. Margitson*, 11 Q. B. 23 ; 17 L. J. Q. B. 81. No such evidence was in fact offered. Cf. *Jolly v. Young*, 1 Esp. 186.

(*s*) *Allen v. Pink*, 4 M. & W. 140.

goods sold should be equal to sample, was omitted by mistake (*t*), or that both the parties have contracted under a mutual mistake as to the subject-matter of the agreement (*u*). And where there has been a verbal alteration as to the mode of performing the contract, it may be enforced by the party who assented to it, though not by the party at whose request it was made (*v*). A written contract may be rescinded by parol ; but strict proof of such rescission would be required (*w*).

The Stamp
Act, 1870,

imposes a
duty of 6d.
upon
written
agree-
ments.

The stamp duties, so far as they relate to the subject-matter of this work, are now regulated by the Stamp Act, 1870 (*x*), by which the former progressive duty is abolished (*y*), and by which, subject to certain exceptions (*z*), a uniform duty of 6*d.* is imposed upon any "agreement or any memorandum of an agreement made in England or Ireland under hand only (*a*), or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written (*b*) instrument" (*c*).

(*t*) *Borrowman v. Rossell*, 16 C. B. N. S. 68 ; 33 L. J. C. P. 111.

(*u*) *Raffles v. Wichelhaus*, 2 H. & C. 906 ; 33 L. J. Ex. 160 ; *M'Collin v. Gilpin*, 29 W. R. 408 ; 44 L. T. N. S. 914.

(*v*) *Plevins v. Downing*, 1 C. P. D. 220 ; 45 L. J. Q. B. 695.

(*w*) *Goss v. Lord Nugent*, 5 B. & Ad. 58 ; Fry, 445.

(*x*) 33 & 34 Vict. c. 97. For the principal portions of the act, see Appendix, *post*, pp. 402, *et seq.*

(*y*) The number of words in any instrument chargeable under the act is, therefore, now immaterial.

(*z*) *Post*, pp. 168, 169.

(*a*) *I. e.* instruments not under seal ; *Chadwicke v. Clarke*, 1 C. B. 700 ; cf. *Walker v. Giles*, 6 C. B. 662, 700, n. An agreement under seal is chargeable with duty as a deed ; *Robinson v. Dryborough*, 6 T. R. 317.

(*b*) The terms "write," "written" and "writing" include every mode in which words or figures can be expressed upon material ; sect. 2, sub-s. 3.

(*c*) Schedule, *tit.* "Agreement," *post*, p. 422.

To fall within the statute, the agreement must be in writing (*d*), and the written instrument must be more than a mere proposal: it "must have been made with the intention of containing in itself the terms of an agreement between the parties" (*e*) and must, moreover, it would seem, have been signed by one of the parties or his agent (*f*). But it is not necessary that it be such a memorandum as would satisfy the Statute of Frauds, provided it is evidence of a material part of the contract (*g*). An agreement to enlarge the time for performing a prior agreement requires to be stamped, where the former agreement required it (*h*).

Agreement,
what is,
within the
act.

Agreement
to enlarge
time.

A broker's note of a purchase of shares, sent to his principal, is not an agreement (*i*); but it requires a 1*d*. stamp as a contract note (*j*).

Broker's
contract
note.

An agreement for a lease or tack, or with respect to the

Agreement
for a lease.

(*d*) See preceding page, note (*b*).

(*e*) Per Parke, B., in *Knight v. Barber*, 16 M. & W. 66, 70; 16 L. J. Ex. 18. Therefore, a written proposal accepted by parol is admissible in evidence, though unstamped; *Drunt v. Brown*, 3 B. & C. 665; 5 D. & R. 582.

(*f*) *Ramsbottom v. Tunbridge*, 2 M. & S. 434, where lands had been let by auction, and the auctioneer had handed to the highest bidder a written paper, containing a description of the lands, and specifying the term for which they were let, and the rent payable. The paper was unstamped; but not having been signed by either of the parties, or their agents, was admitted in evidence; *Hawkins v. Warre*, 3 B. & C. 690; 5 D. & R. 512; and see observations in *Walker v. Giles*, 6 C. B. 662, 700, note, on *Chadwicke v. Clarke*, 1 C. B. 700, where an unsigned draft agreement was held inadmissible, because unstamped.

(*g*) *Ramsbottom v. Mortley*, 2 M. & S. 445, a similar case to *Ramsbottom v. Tunbridge*, *ubi supra*, with this difference, that the paper had been signed by the auctioneer. It was held that it ought to have been stamped, although the name of one of the parties did not appear upon it; approved in *Glover v. Halkett*, 2 H. & N. 487; 26 L. J. Ex. 416.

(*h*) *Bacon v. Simpson*, 3 M. & W. 78.

(*i*) *Tomkins v. Savory*, 8 B. & C. 704.

(*j*) 33 & 34 Vict. c. 97, s. 69; and Schedule, *sub. tit.* "Contract note," for definition of which, see 41 & 42 Vict. c. 15, s. 26, *post*, p. 410, n.

letting of any lands, tenements or heritable subjects, for any term not exceeding thirty-five years, is liable to the same duty as a lease (*k*). Every contract which operates as a demise of realty for any determinate term is a lease (*l*). A lease containing an agreement to take the fixtures cannot be given in evidence without a lease stamp, though only used in an action for the value of the fixtures, and though it has an agreement stamp (*m*). And a lease containing a distinct agreement not ancillary to the lease requires stamps of both kinds (*n*).

Exemptions.

The schedule to the act, in the portion relating to agreements, contains four exemptions from stamp duty, of which the first and third are the only ones which call for notice here (*o*).

a.
Subject-matter under 57.

The first is an "Agreement or memorandum the matter whereof is not of the value of £5." And, since a separate contract arises in respect of each lot sold at an auction (*p*), it is not necessary that a memorandum, signed by the purchaser, referring to the particulars on which his name is marked by the auctioneer against the several lots purchased by him, be stamped, although the aggregate exceed £5 in value, if no single lot be of that price (*q*). But if one or more of the lots so referred to exceed £5, a separate stamp must be affixed for each lot (of land) which exceeds that sum (*r*).

(*k*) 33 & 34 Vict. c. 97, s. 96, sub-s. 1. But a lease made in conformity with such an agreement duly stamped is liable to a duty of 6*d.* only; *ibid.* sub-s. 2. For duties chargeable on leases, see *post*, pp. 416, 432.

(*l*) Add. Con. 1096.

(*m*) *Corder v. Drakeford*, 3 Taunt. 382.

(*n*) *Coster v. Cowling*, 7 Bing. 456; *Lovelock v. Franklyn*, 8 Q. B. 371.

(*o*) The other exemptions will be found *post*, p. 422.

(*p*) See *ante*, p. 148.

(*q*) *Emmerson v. Heelis*, 2 Taunt. 38; *Roots v. Lord Dormer*, 4 B. & Ad. 77.

(*r*) *James v. Shore*, 1 Stark. 426; *Watling v. Horwood*, 12 Jur. 48; 33 & 34 Vict. c. 97, ss. 7, 8; *post*, p. 403.

The third is an "Agreement, letter or memorandum made for, or relating to, the sale of any goods, wares or merchandise." As to what are goods, &c., the reader is referred to the remarks above made on the same words, as used in the 17th section of the Statute of Frauds (*s*). Where the defendant signed and gave to the plaintiff, an auctioneer, the following: "Memorandum of £107 had by me of S. (plaintiff), being an advance on books sent in for immediate sale by auction," the memorandum was held to be within the exemption, as relating to the sale of goods (*t*). But if the main object of the agreement be the obtaining money upon a pledge of goods, the sale of them being merely collateral thereto, the instrument must be stamped (*u*). An agreement for the sale of goods and the goodwill of a business requires a stamp (*v*).

b.

Goods,
wares, or
merchan-
dise.

Instruments for the sale or transfer of any ship or vessel, or of any part, interest or share therein, are exempt from all stamp duties (*w*).

Ships.

The duty imposed must, in general, be denoted by an impressed stamp (*x*); but, in the case of an agreement, an adhesive stamp may be employed, which is to be cancelled by the person by whom the agreement is first executed or signed (*y*). Where the agreement is contained in several

Stamp,
how af-
fixed,

(*a*) *Ante*, pp. 148 *et seq.* A contract for the sale of growing crops within sect. 4 of the Statute of Frauds requires a conveyance stamp; *Catell v. Gamble*, 5 Bing. N. C. 46; 6 Sco. 737; and so does a memorandum of the actual sale of fixtures; *Horsfall v. Hey*, 2 Ex. 778; 17 L. J. Ex. 267, where it was held that the following: "Memorandum that T. has sold to G. all the goods, stock in trade and fixtures in &c." ought to have been stamped as a conveyance.

(*t*) *Southgate v. Bohn*, 16 M. & W. 34.

(*u*) *Smith v. Cator*, 2 B. & Ald. 778.

(*v*) *South v. Finch*, 3 Bing. N. C. 506.

(*w*) 33 & 34 Vict. c. 97, Schedule, *sub. tit.* "General Exemptions;" Appendix, *post*.

(*x*) *Ib.* s. 23.

(*y*) *Ib.* s. 36. S. 24 imposes a penalty of £10 for wilfully neglecting to

documents sufficiently referring to one another (z), it is sufficient if any one of them be stamped (a).

and when
to be
applied.

The instrument should be stamped at the time of execution or signature, though, in most cases, it may be stamped subsequently on payment of the duty and a penalty of £10 and, where the duty exceeds £10, interest on the duty at 5 *per cent.* (b).

Effect of
want of
stamp.

An unstamped, or insufficiently stamped, instrument is inadmissible in evidence, except in criminal cases (c). But it may be stamped by the officer of the court on payment of the duty and a further sum of £1 in addition to the ordinary penalty (d). Where two separate agreements, each requiring a stamp, appear on one piece of paper, the want of a stamp on the one will not affect the other, if properly stamped (e).

cancel an adhesive stamp; and see further s. 25, as to penalties for frauds in relation to adhesive stamps.

(z) See *ante*, pp. 157 *et seq.*

(a) *Peate v. Dicken*, 1 C. M. & R. 422.

(b) 33 & 34 Vict. c. 97, s. 15. In certain cases the commissioners have power to remit the penalty; see *ib.* s. 26.

(c) Sect. 17. It must be remembered that parol evidence cannot be given of the terms of a written agreement, although such agreement need not have been in writing.

(d) Sect. 16. For further information on the stamp duties, see Griffith's Stamp Duties Digest, and Roscoe, pp. 220 *et seq.*

(e) *Powell v. Edmunds*, 12 East, 6.

CHAPTER IX.

THE DEPOSIT.

It is usual, at auction-sales, to require part of the purchase-money to be paid down, as a guarantee for the fulfilment of the contract. This sum, which varies from 5 to 25 per cent. of the purchase-money, is called the deposit. Payment of the deposit is considered as a payment of part of the purchase-money, and not as a mere pledge (*a*).

The deposit is commonly made payable, in London, to the auctioneer ; but in the country, upon sales of estates, the vendor's solicitor (*b*). It is the opinion of Mr. Dart that, upon a sale of land, it should not be paid to a mere agent for sale, without express authority from the vendor (*c*) ; but upon a sale by auction of goods for ready money it may be so paid, the auctioneer being, in the absence of

Deposit,
what.

To whom
paid.

(*a*) *Palmer v. Temple*, 9 A. & E. 508, 520 ; 1 P. & D. 379, 387 ; ante, p. 164. The purchaser cannot elect to forfeit his deposit and avoid the contract ; *Crutchley v. Jerningham*, 2 Mer. 502, 506.

(*b*) Dr. Bateman's opinion was that the deposit ought to be made payable to the vendor himself. Considering, however, that the sale is frequently conducted in the vendor's absence, the ordinary practice seems more convenient ; and, as Mr. Rolla Rouse has pointed out, the deposit would in many cases, *e. g.*, where the property is mortgaged to a party at a distance, ignorant of the sale, be safer in the hands of a stakeholder.

(*c*) Dart, 191. The conditions ought always to provide to whom the deposit is to be paid.

any condition to the contrary, the agent of the vendor to receive the whole price (*d*).

How paid. If any particular time or mode be prescribed for payment of the deposit, the purchaser cannot safely pay it at any other time or in any other mode, except to the vendor himself or by the direction of the latter (*e*). A purchaser is not entitled to set off a debt due to him from the auctioneer as payment of the deposit, unless he can show that the auctioneer was authorized by his principal to retain the deposit in respect of a debt due to him from the latter (*f*). No objection can, however, be made, as between the vendor and the purchaser, to the whole of the deposit stipulated for in the conditions not having been paid, if the vendor after the sale has agreed to accept a less sum (*g*).

Cash. It is laid down in *Story on Agency* (*h*) that : "An agent authorized to receive payment has not an unlimited authority to receive it in any mode which he may choose, but he is ordinarily deemed entrusted with the power to receive it in money only." And it is undoubted that the auctioneer has no general authority to take a bill of exchange in payment of money which he may be authorized to receive (*i*). Pay-

Bill of exchange.

(*d*) If the conditions provide merely for the deposit being paid to the auctioneer, that appears to exclude his authority to receive the whole price ; *Sykes v. Giles*, 5 M. & W. 645, 650 ; *Mynn v. Joliffe*, 1 Moo. & R. 326.

(*e*) *Dart*, 191 ; *Young v. Guy*, 8 Beav. 147. A purchaser is not liable for any loss that may arise from his following the express directions of the vendor ; *Warwicke v. Noakes*, 1 Peake, 98 ; *Hawkins v. Rutt*, *ib.* 248 ; *Eyles v. Ellis*, 4 Bing. 112.

(*f*) *Barker v. Greenwood*, 2 Y. & C. 414 ; *Young v. White*, 7 Beav. 506 ; *Hanley v. Cassan*, 11 Jur. 1088 ; *Sweeting v. Pearce*, 9 C. B. N. S. 534 ; 7 Jur. N. S. 800.

(*g*) *Hanson v. Roberdeau*, Peake, N. P. C. 163 ; cf. *Ex parte Gwynne*, 12 Ves. 379, 383. But if the auctioneer, without express authority, allow the purchaser to pay part only, the vendor will not be bound thereby.

(*h*) *Story*, Ag. § 98.

(*i*) See *infra*, p. 174.

ment by cheque, however, would probably be treated as Cheque.
 equivalent to a payment in money (j). The point has not
 been directly decided, but it is indirectly touched upon in
 the case of *Williams v. Evans* (k). There W. (the plaintiff) *Williams*
 had employed L., an auctioneer, to sell certain goods under *v. Evans.*
 the following, among other, conditions: "Each purchaser
 . . . to pay down into the hands of the auctioneer . . . a
 deposit of . . . ; remainder, or balance, to be paid on or
 before delivery of the goods or lots purchased. The lots
 sold . . . must be duly paid for, on delivery, to the auc-
 tioneer. . . . The goods may remain on the premises till
 . . . the 3rd of Nov. . . ." The sale took place on the
 2nd of Nov., but, the purchaser of one of the lots not
 having complied with the conditions, the lot was, on the
 4th of Nov., resold to E. for £47 7s., on the terms contained
 in the conditions, and was delivered to him on the 7th of
 Nov. On the latter day W., having reason to doubt L.'s
 solvency, told E. not to pay any money to L. It appeared
 that E. had on the 4th of Nov. paid L. £32 in gold and
 on the following day had given him a bill of exchange for
 £15 7s., which was duly honoured on the 9th of Nov., and
 that L. had agreed to accept the bill as cash. L. had not
 paid over any of the money to W. At the trial the jury
 found a verdict for E.; but the point was subsequently
 argued before the Court of Queen's Bench, whether L. had
 authority to give credit by taking a bill of exchange; and
 the following judgment of the court (l) was delivered by
 Blackburn, J.: "The question on the point reserved at the Judgment.

(j) "If payment is made by cheque, and the cheque is honoured, that is a payment in cash;" per Cockburn, C. J., in *Bridges v. Garrett*, L. R. 5 C. P. 451; 39 L. J. C. P. 251.

(k) L. R. 1 Q. B. 352; 35 L. J. Q. B. 111; 13 L. T. N. S. 753; 14 W. R. 330.

(l) The court consisted of Blackburn, Mellor and Shee, JJ.

trial is, whether, or not, a payment to an auctioneer by a bill of exchange is a valid payment. I think, on the authorities, it is not. If the bill had become due and been paid before the authority of the auctioneer to receive payment had been revoked, it would have amounted to much the same thing as cash. In the present case the authority was revoked after the bill was given, but before maturity, that is, before the auctioneer received cash for the sum of £15 7s. The passage cited from Story (*m*) shows that an agent authorized to receive payment has ordinarily authority to receive it only in cash. In *Sykes v. Giles* (*n*) the Court of Exchequer expressed a strong opinion that an auctioneer cannot receive payment from a buyer, except in cash. If the payment had been by cheque, then it might be a question for the jury—since it is the custom to pay by cheques—whether the payment would be good or not. In *Thorold v. Smith* (*o*), where a payment was made in the city by a goldsmith's note to a servant sent by his master to receive money, Holt, C. J., said he thought it more a matter of evidence than of law, and any jury in Guildhall would find payment by a bill (*p*) to be a good payment, it being the common practice in the city (*q*). I think, on the authority of *Sykes v. Giles*, payment by a bill of exchange to an auctioneer is not a valid payment for the purpose of discharging the debtor, and the verdict must therefore be

Conclusion. entered for the plaintiffs for £15 7s." The conclusion to be drawn would appear to be that the auctioneer will be justified, provided he use reasonable caution, in taking a cheque,

(*m*) Story, Ag. § 98, see *supra*.

(*n*) 5 M. & W. 645.

(*o*) 11 Mod. 87.

(*p*) Meaning a goldsmith's note.

(*q*) *I.e.* in the year 1705, when *Thorold v. Smith* was decided.

and the purchaser in paying by cheque, in all cases where payment by cheque is customary. On a sale of goods, however, it will be safer for the auctioneer to withhold delivery, until the cheque has been cashed.

If, by the conditions of sale, the auctioneer or solicitor is the party to whom the deposit is payable, he ought to require payment without delay; if he gives credit, he does so entirely at his own risk (r). In the case of *Hibbert v. Bayley* (s) a ship was put up for sale by auction, one of the conditions being that the highest bidder should immediately sign the contract and pay a deposit, or the ship should be put up again. The auctioneers allowed the highest bidder to go away without signing the contract or paying the deposit, he having promised to return in half an hour with the deposit. He did not come back and could not be found, and the owner subsequently sold the ship at a less price than the pretended purchaser had bid. Erle, C. J., left it to the jury to say whether the auctioneers had been guilty of a neglect of duty in not demanding the deposit and reselling the ship if the purchaser did not pay. The jury found a verdict against the auctioneers, but with nominal damages only, as the owner had not, in their opinion, suffered any real injury.

If the deposit is paid to the solicitor, or, it is conceived, to the auctioneer (t), as agent for the vendor, he must pay

Duties and liabilities of depositary: *Hibbert v. Bayley*.

as agent for the vendor;

(r) *Williams v. Millington*, 1 H. Bl. 81, 85; *Wiltshire v. Sims*, 1 Camp. 258.

(s) 2 F. & F. 48.

(t) Generally, the auctioneer receives the deposit as stakeholder; but there appears to be no reason why he should not receive it expressly as agent for the vendor; and Mr. Dart (V. & P. 948) says that it is a common practice for him to receive it in that capacity. The fact that he did so receive it will, however, require stricter proof in his case than in that of the solicitor; see *Edgell v. Day*, L. R. 1 C. P. 80; H. & R. 8; 35 L. J. C. P. 7.

it over to the latter on demand (*u*) ; though, if he neglect to do so, he is not accountable for it to the purchaser (*v*). It seems, however, that it may be recovered from him, if the purchaser paid it to him under protest, and his principal had no right to receive it (*w*). His liability for money received by him on his principal's behalf is dealt with in a subsequent chapter (*x*).

as stake
holder.

Generally speaking, the auctioneer (*y*), and sometimes the solicitor (*z*), receives the deposit as a stakeholder, in which case it is his duty, unless otherwise directed by both parties, to retain it in his possession, until the contract is, either carried into effect, or rescinded, and the party entitled is ascertained (*a*) ; and neither party can determine his authority to so retain it, without the consent of the other (*b*). If the auctioneer return the deposit to the purchaser without proper justification, he will be liable for it to the vendor. But if the contract be rescinded, and the deposit recovered, by the purchaser, on the ground of fraud on the part of the auctioneer, the vendor, though innocent of the fraud, cannot recover the amount from the auctioneer

(*u*) *Edgell v. Day*, L. R. 1 C. P. 80 ; H. & R. 8 ; 35 L. J. C. P. 7.

(*v*) *Bamford v. Shuttleworth*, 11 A. & E. 926 ; *Hurley v. Baker*, 16 M. & W. 28.

(*w*) *Smith v. Slap*, 12 M. & W. 585, 588.

(*x*) Ch. XII.

(*y*) *Edgell v. Day*, *ubi supra*.

(*z*) *E.g.*, where he receives it in his own name simply, and not as agent for the vendor ; *Wiggins v. Lord*, 4 Beav. 30. "The purchaser can always convert the solicitor into a stakeholder by depositing the money with him on the terms that he shall hold it as such ;" *per* Keating, J., in *Edgell v. Day*, *ubi supra* ; *sed qu.* where the contract has been signed, and the conditions provide for the deposit being paid to him "as agent for the vendor."

(*a*) *Burrough v. Skinner*, 5 Burr. 2639 ; *Edwards v. Hodding*, 5 Taunt. 815 ; 1 Marsh. 377 ; *Harington v. Hoggart*, 1 B. & Ad. 577.

(*b*) *Marryat v. Broderick*, 2 M. & W. 369 ; *Emery v. Richards*, 14 M. & W. 728 ; 15 L. J. Ex. 49.

as money had and received to his use (c). A stakeholder who has prematurely paid over the deposit to the vendor will be liable to the purchaser for the amount, if the contract is subsequently rescinded through the default of the vendor; nor is he, in strictness, entitled to notice of the rescission (d). If the auctioneer, after having paid over the deposit to his principal, has been subsequently obliged to refund the amount to the purchaser, he can recover over against his principal (e); and where he has incurred costs in defending an action for the deposit by the express or implied authority of his principal, he can recover from the latter the costs so incurred (f).

As soon as it is determined which of the parties is entitled to the deposit, the stakeholder must pay it over to that party (g). And the auctioneer is justified in paying it over to him, even though, to the knowledge of the auctioneer, he is in embarrassed circumstances; provided that he has not committed an act of bankruptcy (h). Where an auctioneer, employed to sell property under an order of the Court, sent the deposit to the firm of solicitors acting for the party

Payment
over and
investment
of deposit.

(c) *Murray v. Mann*, 2 Ex. 538; 17 L. J. Ex. 256; cf. *Stevens v. Leigh*, 2 C. L. R. 251.

(d) *Gray v. Gutteridge*, 1 Man. & B. 614; 3 C. & P. 40; *Duncan v. Cafe*, 2 M. & W. 244. In fairness to the auctioneer notice should, however, be given. As to the particulars to which the auctioneer is entitled in such an action, see *Roberts v. Rowlands*, 3 M. & W. 543; 6 Dowl. P. R. 553.

(e) Even, perhaps, when he has been obliged to refund it through his own fraud, his principal being innocent; *Murray v. Mann*, 2 Ex. 538, 540; 17 L. J. Ex. 256, 257.

(f) *Spurrier v. Elderton*, 5 Esp. 1.

(g) And if he refuse to pay it over after demand made, interest may be recovered, by way of damages, after notice given; *Gaby v. Driver*, 2 Y. & J. 549; 3 & 4 Will. IV. c. 42, s. 28, Appendix, *post*, p. 439. As to interpleader, see *post*, Ch. XI.

(h) *White v. Bartlett*, 9 Bing. 378. As to what is notice of an act of bankruptcy, see *ante*, p. 124. Under what circumstances an auctioneer can set up the *jus tertii* against his principal, see *ante*, p. 34.

having the conduct of the sale, for payment into court, and the member of the firm who received the money misappropriated it, it was held that the loss fell upon the other partners, although they did not know that the money had been paid; and not upon the auctioneer (*i*). If a stakeholder, during the time that the deposit remains in his hands, chooses to invest it, he does so at his own risk; but, on the other hand, he is entitled to any profit that may accrue from such investment; nor is it competent for one of the parties to require him to lay out the money and to account for any interest that may be made thereon, even though that party have offered to indemnify him for any loss that may result from the investment (*j*). If both parties direct him to invest the money, any loss that may result, or any profit that may be derived, from such investment, will fall on, or accrue to, the party ultimately entitled to the money (*k*). On paying over the deposit to the vendor the auctioneer has a right to deduct his commission and the expenses of the sale (*l*).

Vendor,
when
entitled;

The vendor is entitled to the deposit on the completion of the contract (*m*); and if, after conveyance executed, the title prove defective, the purchaser cannot claim a return of

(*i*) *Biggs v. Bree*, 30 W. R. 132; W. N. 1882, 2. It was stated in affidavits made in that case that it was part of the duty of the solicitor for the party having the conduct of a sale under the direction of the Court to receive the deposit from the auctioneer and to pay it into court for him, and that such solicitor was invariably allowed by the taxing-master his costs of making such payment into court, whereas the auctioneer, if he employed his own solicitor to make such payment, would have to pay the costs out of his own pocket.

(*j*) *Lee v. Munn*, 8 Taunt. 45; 1 Moore, 481; *Curling v. Shuttleworth*, 6 Bing. 121, 134; 3 Moo. & P. 368; *Harington v. Hoggart*, 1 B. & Ad. 577; cf. *Edgell v. Day*, L. R. 1 C. P. 80; H. & R. 8; 35 L. J. C. P. 7.

(*k*) See judgments in *Harington v. Hoggart*, *ubi supra*.

(*l*) See *post*, p. 228, as to auctioneer's lien.

(*m*) *Harington v. Hoggart*, 1 B. & Ad. 577.

the deposit, but must proceed upon the special covenants, if there are any (*n*). Where the purchaser fails, or refuses, to perform the contract, the deposit is forfeited to the vendor, if it can be implied from the contract that such was the intention of the parties (*o*); even, it appears, when the contract was such as could not, on the ground of some informality, have been enforced by the vendor; provided that the latter was ready and willing to perform it on his part, and the purchaser contracted with knowledge of the informality (*p*). Nor does it make any difference that the purchaser has given a security, as an I. O. U., for the deposit, instead of paying it in money; for he can be sued upon the security (*q*). The best way to express the intention of the parties is to provide in the conditions for the forfeiture of the deposit; although it has been held, after some hesitation (*r*), that, even in the absence of such a condition, the vendor can retain the deposit, where the sale goes off through the default of the purchaser (*s*). Upon a purchase upon lunacy, by a lunatic, the vendor cannot be required to refund the deposit, unless he contracted with notice of the lunacy (*t*).

(*n*) *Clare v. Lamb*, L. R. 10 C. P. 334; 44 L. J. C. P. 177.

(*o*) *Hinton v. Sparkes*, *ubi inf.*; *Thomas v. Brown*, *ubi inf.*; *Essex v. Daniell*, L. R. 10 C. P. 538; 32 L. T. N. S. 476.

(*p*) *Thomas v. Brown*, 1 Q. B. D. 714; 45 L. J. Q. B. 811; questioning *Casson v. Roberts*, 31 Beav. 613; 32 L. J. Ch. 105; 8 Jur. N. S. 1199; 11 W. R. 102.

(*q*) *Hinton v. Sparkes*, L. R. 3 C. P. 161; 37 L. J. C. P. 81.

(*r*) See *Palmer v. Temple*, 9 A. & E. 508; 1 P. & D. 379; *Casson v. Roberts*, *ubi sup.*

(*s*) *Kell v. Nokes*, 14 W. R. 908; *Depree v. Bedborough*, 4 Giff. 479; 33 L. J. Ch. 134; *Ex pte. Barrell*, L. R. 10 Ch. 512; 44 L. J. B. 138. In the two last cases the party seeking to recover the deposit was the trustee in bankruptcy of the insolvent purchaser.

(*t*) *Beavan v. M'Donnell*, 9 Ex. 309; 23 L. J. Ex. 94. In *Frost v. Beavan*, 17 Jur. 369, the vendor was required to return the residue of the deposit after deducting his expenses &c.; but Mr. Dart says (V. & P. 6, n. (i),) that this was done by arrangement, the vendor having sold with notice of the insanity.

or death, of purchaser. Where the purchaser dies, before obtaining a conveyance, intestate and without an heir, it seems probable that the vendor may retain both the estate and the deposit (*u*). But if the vendor seek to recover damages in respect of loss that he has incurred in reselling the property, he must bring the deposit into account (*v*). Nor is he entitled to retain the deposit, if he has prevented the purchaser from fulfilling the contract, or has caused him to incur a forfeiture of the deposit by fraudulent statements or deceitful promises (*w*).

Purchaser, when entitled ; If the contract is rescinded on the ground of fraud or misrepresentation on the part of the vendor (*x*), or if the vendor refuses or is unable to perform it (*y*), the purchaser is entitled to a return of the deposit; but the vendor will be allowed a reasonable time in which to make a good title (*z*). If the contract is invalid through not having been reduced into writing (*a*) or has been abandoned by mutual consent (*b*), the purchaser may recover the deposit. A purchaser can successfully resist an action brought upon

(*u*) Dart, 193.

(*v*) *Ockenden v. Henly*, E. B. & E. 485; 27 L. J. Q. B. 361; 4 Jur. N. S. 999; *Essex v. Daniell*, L. R. 10 C. P. 538; 32 L. T. N. S. 476.

(*w*) *Carpenter v. Blandford*, 8 B. & C. 575; 3 Man. & R. 93; Add. Con. 413.

(*x*) *Thornett v. Haines*, 15 M. & W. 367; 15 L. J. Ex. 230; *Aberaman Ironworks v. Wickens*, L. R. 4 Ch. 101; 20 L. T. N. S. 89.

(*y*) *Boymen v. Gutch*, 7 Bing. 379; 5 M. & P. 222; *Wilson v. Wilson*, 14 C. B. 616; 2 C. L. R. 818; 23 L. J. C. P. 137; 18 Jur. 581.

(*z*) Dart, 418; see also Jud. Act, 1873, s. 25, sub-s. 7. The purchaser should give the vendor notice of his intention to sue for a return of the deposit, and allow him a reasonable time from the date of the notice to complete the contract; Add. Con. 412.

(*a*) *Caeson v. Roberts*, 31 Beav. 613; 32 L. J. Ch. 105; 8 Jur. N. S. 1199; 11 W. R. 102; cf. *Gosbell v. Archer*, 2 A. & E. 500; 4 N. & M. 485; 1 H. & W. 31; *Walker v. Constable*, 1 B. & P. 306; Seton, 1312.

(*b*) Add. Con. 412.

a bill of exchange, a cheque (c) or an I. O. U. (d) which he has given in payment of the deposit, where the circumstances are such that he could recover the deposit itself, if it had been paid in money; and he will, in general, be relieved against forfeiture of the deposit, if he is able and willing to give the vendor the full benefit of the contract (e). And, on the failure of an action for specific performance brought by him against the vendor, the Court has now, it would appear, power to order that the deposit be returned to him, if he is entitled to it, without leaving him to bring an action for it (f).

Except under special circumstances, the purchaser can with interest. recover from the vendor, by way of special damage resulting from the latter's breach of contract, interest upon the deposit from the day on which the contract was entered into (g). When the deposit has been paid into court and invested, the purchaser is entitled, in the event of the contract being rescinded through the vendor's default, "to have the Bank Annuities produced by the investment of the deposit, and the dividends that have accrued thereon, not in the shape of interest, but on the ground that it is his own money, and that he is entitled to whatever it has produced. He will be allowed the costs, charges, expenses &c. (h). If, however, he insists on the return of the money itself, he is entitled to it and

(c) *Mills v. Oddy*, 6 C. & P. 728.

(d) *Wilson v. Wilson*, *ubi sup.*

(e) *Dart*, 193; *Sugd.* 55.

(f) *Jud. Act*, 1875, O. xix, r. 8; *Tamplin v. James*, 15 Ch. D. 215, 222; 29 W. R. 311; 43 L. T. N. S. 520.

(g) *Maberley v. Robins*, 5 Taunt. 625; 1 Marsh. 258; *Farquhar v. Farley*, 7 Taunt. 592; 1 Moore, 322, where the purchaser had already recovered the deposit itself from the auctioneer; *Hodges v. Earl of Litchfield*, 1 Bing. N. C. 492; 1 Sco. 443; 1 Hodg. 40.

(h) See *Seton*, 1410.

to all the dividends which have arisen from its investment" (i).

Insolvency
or *mala*
fides of
auctioneer.

If the deposit has been paid to the auctioneer, or solicitor, as agent for the vendor, the latter may be sued for it, although it has not been paid over to him, payment to the agent being equivalent to payment to the principal (j). And even where the deposit has been paid to the auctioneer, or solicitor, as stakeholder, the vendor is, as a general rule, responsible for any loss that may have been occasioned to the purchaser by the insolvency or *mala fides* of the stakeholder (k); and so it has been held even in the case of a mortgagee vendor who had adopted a contract of sale made by the mortgagor (l).

Purchaser's
lien for
deposit.
When
deposit
should be
paid into
court.

A purchaser who is entitled to the deposit has a lien upon the estate for the amount and interest (m).

Since the auctioneer generally acts as stakeholder, he is frequently made a co-defendant in an action for specific

(i) *Per* Bacon, V.-C., in *Powell v. Powell*, L. R. 19 Eq. 422, 425; 44 L. J. Ch. 311, where the ordinary condition providing for the return of the deposit without interest was held not to apply under the circumstances. And it seems that such a condition is inapplicable, where there has been long delay on the part of the vendor; *M'Culloch v. Gregory*, 1 K. & J. 286; Seton, 1312. Where the deposit is considerable, and it is probable that the purchase will not be completed for a long time, it seems advisable for the parties to enter into some arrangement as to its investment; Sugd. 54.

(j) *Duke of Norfolk v. Worthy*, 1 Camp. 337; *Bamford v. Shuttleworth*, 11 A. & E. 926; *Edgell v. Day*, L. P. 1 C. P. 80; H. & R. 8; 35 L. J. C. P. 7.

(k) *Sanderson v. Walker*, 13 Ves. 601, 602; *Fenton v. Browne*, 14 Ves. 144, 150; *Annesley v. Muggridge*, 1 Madd. 593, 596; *Smith v. Jackson*, 1 Madd. 618, 620.

(l) *Roue v. May*, 18 Beav. 613. Nothing was decided as between mortgagor and mortgagee. A fiduciary vendor who has not been guilty of negligence is not personally responsible to his *cestuis que trust* for any such loss; *Edmonds v. Peake*, 7 Beav. 239.

(m) *Wythes v. Lee*, 3 Drew. 396; *Rose v. Watson*, 10 H. L. C. 672; *Turner v. Marriott*, L. R. 3 Eq. 744; *Torrance v. Bolton*, L. R. 14 Eq. 124; 41 L. J. Ch. 643; *aff.* L. R. 8 Ch. 118; 42 L. J. Ch. 177.

performance; but, as a general rule, this should not be done, where the deposit is of small amount, unless he refuses to pay it into court, when required; where, however, it is of large amount, he may properly be made a co-defendant, unless he has paid it into court before action brought (*n*). If he brings the deposit into court, he will, it appears, be allowed to deduct his charges and expenses, subject to the question who shall ultimately bear them (*o*).

But an auctioneer against whom fraud is alleged cannot, in an action for rescission of the contract, brought against the vendor and himself by the purchaser, claim to be dismissed from the action on paying the deposit into court (*p*).

The auctioneer's right to interplead is dealt with in a subsequent chapter (*q*). Interpleader.

(*n*) *Earl of Egmont v. Smith*, 6 Ch. D. 469; 46 L. J. Ch. 356. The practice is to apply to the auctioneer to pay it into court, and make him a co-defendant, if he refuse; Seton, 1312.

(*o*) Sugd. 51; Dart, 179; *Annesley v. Muggridge*, 1 Madd. 593; *Yates v. Farebrother*, 4 Madd. 239. In *Blenkhorn v. Penrose*, 29 W. R. 236, the auctioneer, who had been made co-defendant to an action for rescission of the contract, but had been dismissed on paying the deposit into court, obtained leave, on the termination of the action in favour of the vendors, to pay over the deposit after deducting his expenses.

(*p*) *Heatley v. Newton*, 45 L. T. N. S. 455; 30 W. R. 72.

(*q*) Chap. XI.

CHAPTER X.

ENFORCING THE CONTRACT.

THIS chapter contains a summary of the different ways of enforcing a sale by auction.

The contract, when complete.

On a sale of goods at a less price than £10, an unretracted bidding and an acceptance of the same are sufficient to render the sale complete ; but on a sale of lands at any price, or of goods at or above the price of £10, something further is required : there must be a written memorandum of the contract, or else, in the case of goods, either a delivery and acceptance of the thing sold, or a part payment of the price.

When the property in land passes.

The legal estate in land does not pass until the execution of the conveyance (a) ; but as soon as there is "a valid contract for sale, the vendor becomes in equity a trustee, for the purchaser, of the estate sold, and the beneficial ownership passes to the purchaser. . . If anything happens to the estate between the time of sale and the time of completion of the purchase, it is at the risk of the purchaser. If it is a house that is sold, and the house is burnt down, the purchaser loses the house. He must insure it himself, if he

(a) For the rule, where the sale is by order of the Court, see *post*, p. 248.

wants to provide against such an accident (*b*). . . In the same way, there is a correlative liability on the part of the vendor in possession. He is not entitled to treat the estate as his own. If he wilfully damages or injures it, he is liable to the purchaser; and, more than that, he is liable, if he does not take reasonable care of it" (*c*).

But, in the absence of express stipulation to the contrary, the vendor has a right to retain possession of the estate, or to receive the rents and profits, until the purchase-money is paid (*d*). And even notwithstanding the execution of a conveyance acknowledging payment of the purchase-money and bearing an endorsed receipt for the amount, and notwithstanding delivery of possession to the purchaser, an unpaid vendor has an equitable lien upon the land for so much of the purchase-money as remains unpaid (*e*).

The vendor's lien upon land;

The vendor will, however, lose this lien, if he takes an independent security for payment, such as a charge upon stock, or a mortgage of another estate (*f*); but not, if he takes a document which only evidences, or facilitates enforcement of, his claim against the purchaser, such as a promissory note, bill of exchange, or bond (*g*).

how lost.

"Where a bargain and sale is completed with respect to goods, and everything to be done on the part of the vendor

When the property in goods

(*b*) And, in the absence of express stipulation, he cannot claim the benefit of any insurance that may have been effected by the vendor; *Poole v. Adams*, 33 L. J. Ch. 639; 12 W. R. 683; *Rayner v. Preston*, 18 Ch. D. 1; 50 L. J. Ch. 472.

(*c*) *Per Jessel, M.R.*, in *Lysaght v. Edwards*, 2 Ch. D. 499, 507; 45 L. J. Ch. 554, 558; cf. *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582.

(*d*) *Lysaght v. Edwards*, *ubi supra*.

(*e*) *Dart*, 729, 730.

(*f*) *Ib.* 733; *Earl of Jersey v. Briton Ferry Floating Dock Co.*, L. R. 7 Eq. 409; *In re Brentwood Brick & Coal Co.*, 4 Ch. D. 562; 46 L. J. Ch. 554.

(*g*) *Dart*, 734.

passes—
upon a
bargain
and sale ;

Sweeting
v. Turner.

under an
executory
agreement.

before the property should pass has been performed, then the property vests in the purchaser ; . . and any accident happening to the things subsequently, unless it is caused by the default of the vendor, any calamity befalling them after the sale is completed, must be borne by the purchaser ; and, by parity of reasoning, any benefit to them is his benefit, and not that of the vendor " (h). Where goods sold by auction, there being a condition of sale that "each and all lots shall be taken to be delivered at the fall of the hammer, after which time they shall remain and be at the exclusive risk of the purchaser," were left by the purchaser on the premises of the vendor, whose landlord subsequently threatened to distrain the goods for rent, whereupon the auctioneer paid off the distress, it was held that the auctioneer could not charge his principal with the amount, as the loss, if the goods had been distrained, would have fallen on the purchaser, to whom the right of property had passed by the sale (i).

But if something remains to be done by the vendor, for the purpose of putting the goods into a deliverable state, or for the purpose of ascertaining the price, as, where goods are sold by weight or measure, until that is done, until, for instance, the goods are weighed or measured, the property does not pass (j). And where there is a bargain for a certain quantity of goods out of a greater quantity, with a power of selection in

(h) *Per* Blackburn, J., in *Sweeting v. Turner*, L. R. 7 Q. B. 310, 313 ; 41 L. J. Q. B. 58 ; 25 L. T. N. S. 796 ; 20 W. R. 185 ; cf. *Greaves v. Hepke*, 2 B. & Ald. 181 ; *Bloxam v. Saunders*, 4 B. & C. 941, 948 ; *Tarling v. Baxter*, 6 B. & C. 360, 364 ; *M'Bain v. Wallace*, 6 App. Cas. 588, 608. A purchaser at an auction can before payment make a complete bargain and sale of the article which he has bought to a third party so as to maintain an action for the price ; *Scott v. England*, 2 D. & L. 520.

(i) *Sweeting v. Turner*, *ubi supra*.

(j) *Simmons v. Swift*, 5 B. & C. 857 ; 8 Dow. & R. 693 ; *Gillett v. Hill*, 2 C. & M. 530, 535 ; *Jenner v. Smith*, L. R. 4 C. P. 270 ; cf. *Turley v. Bates*, 2 H. & C. 200 ; 33 L. J. Ex. 43.

the vendor to deliver what he thinks fit, the property does not pass, until that power is exercised (*k*). The case of *Rugg v. Minett* (*l*) affords a good illustration of the principles which obtain. There turpentine in casks was sold by auction in 27 lots. The casks were to be taken at a certain marked quantity, except the two last, out of which the seller was to fill up the rest before delivering them to the purchasers, and on this account the two last were to be taken at uncertain quantities. Fifteen of the casks had been filled up, when the whole number were destroyed by fire. It was held that, as regarded the fifteen casks, the loss fell upon the purchasers, as nothing further remained to be done to them by the seller, but, as regarded the remainder, the loss fell upon the seller. *Rugg v. Minett.*

When the right of property has passed to the buyer, he does not lose his title to the goods by merely not removing them within the time specified in the conditions of sale (*m*). Non-clear-
ance of
goods.

Although, by the contract of sale, the purchaser may have the right of property in the goods, yet the vendor has, generally speaking, a right to retain them, until the purchase-money is paid (*n*). But his lien is destroyed, if he parts with the possession of them (*o*). "If goods are sold upon credit, and nothing is agreed upon as to the time of delivering the goods, the vendee is immediately entitled to the possession, and the right of possession and the right of property vest at Vendor's
lien upon
goods;

how lost;

no lien
upon goods
sold on
credit.

(*k*) *Gillett v. Hill*, *ubi supra*; *Alexander v. Gardner*, 1 Bing. N. C. 671; 1 Hodg. 147; *Mirabita v. Imperial Ottoman Bank*, 3 Ex. D. 164, 172; 47 L. J. Q. B. 418. The general rule may, however, be modified by special agreement.

(*l*) 11 East, 210.

(*m*) *Saint v. Pilley*, L. R. 10 Ex. 137; *Woolfe v. Horne*, 2 Q. B. D. 355; 46 L. J. Q. B. 534. See *post*, p. 199, as to resale.

(*n*) *Bloxam v. Saunders*, 4 B. & C. 941, 948; *Tarling v. Baxter* 6 B. & C. 360, 364.

(*o*) *Taylor v. Robinson*, 8 Taunt. 648.

Stoppage
in trans-
itu;

where part
of goods
delivered.

once in him ; but his right of possession is not absolute, it is liable to be defeated, if he become insolvent, before he obtains possession" (p). Even if the vendor has started the goods and delivered them to a carrier, he has, upon the purchaser's insolvency, a right to stop them on the way, provided they have not been actually delivered (q) ; and it is immaterial that the purchaser has given a bill for them which has not yet become due ; for a vendor is not compelled to deliver to an insolvent purchaser (r). Goods "are *in transitu*, so long as they are in the hands of the carrier as such, whether he was or was not appointed by the consignee, and also so long as they remain in any place of deposit connected with their transmission" (s). Where a portion only of goods, capable of being estimated separately as to its value, has been delivered, the vendor has a right of stoppage *in transitu* as to the remainder, unless there is evidence to show that delivery of the part was intended to operate as a delivery of the whole (t). But a mere suspicion of the insolvency of the buyer is not

(p) *Per* Bayley, J., in *Bloxam v. Saunders*, 4 B. & C. 941, 948. As to bankruptcy of purchaser, see *post*, p. 201.

(q) The better opinion seems to be that stoppage *in transitu* does not rescind the contract, and that goods so detained will remain at the risk of the vendee, and cannot be sold by the vendor, until the period of credit has expired ; notes to *Lickbarrow v. Mason*, 1 Sm. L. C. 756.

(r) *Gunn v. Bolckow, Vaughan & Co.*, L. R. 10 Ch. 491, 501 ; 44 L. J. Ch. 732 ; *Ex parte Willoughby*, 16 Ch. D. 604.

(s) Notes to *Lickbarrow v. Mason*, 1 Sm. L. C. 756, 818. Approved by Brett, L. J., in *Ex parte Rosevear China Clay Co.*, 11 Ch. D. 560, 570 ; 48 L. J. B. 100 ; *Ex parte Cooper*, 11 Ch. D. 68, 78 ; 48 L. J. B. 49. When the purchaser of goods has resold them, though the vendor loses by the resale the right to stop the goods themselves *in transitu*, he is entitled, if he gives that which would, had there been no resale, be a valid notice of stoppage *in transitu*, to intercept, to the extent of his own unpaid purchase-money, so much of the sub-purchaser's purchase-money as remains unpaid by him ; *Ex parte Falk*, 14 Ch. D. 446.

(t) *Ex parte Cooper*, 11 Ch. D. 68, 76 ; 48 L. J. B. 49 ; cf. *Wentworth v. Outhwaite*, 10 M. & W. 436.

sufficient to justify a vendor in stopping goods *in transitu* (u).

A complete contract will not, as a general rule (v), be avoided by the subsequent death, bankruptcy, insolvency or lunacy of both or either of the parties (w). Their rights and liabilities under the contract devolve, in case of death (x), on the personal representatives of the deceased (y); in case of bankruptcy, on the trustee in the bankruptcy (z); and in case of lunacy, upon the committee of the lunatic (a).

And, although the contract may be rescinded on the Fraud,

(u) *In re Phoenix Bessemer Steel Co.*, 4 Ch. D. 108; 46 L. J. Ch. 115.

(v) Unless there be an express stipulation to that effect, or the contract be one for personal services; Add. Con. 291.

(w) Dart, 253.

(x) When an action is brought for specific performance of a contract relating to real estate, both the real and the personal representatives of the deceased should, in general, be made parties to the action; see Fry, pp. 82 *et seq.*

(y) Dart, 957; Add. Con. 330.

(z) 32 & 33 Vict. c. 71 (Bankruptcy Act, 1869), ss. 22, 25. By s. 23 the trustee may disclaim, *inter alia*, any unprofitable contracts entered into by the bankrupt, "and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication;" but, by s. 24, he is not entitled to disclaim, when an application in writing has been made to him by any person interested in the property, requiring him to decide whether he will disclaim or not, and he has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the court, declined or neglected to give notice whether he disclaims or not; and any person injured by the exercise of the right of disclaimer is to be deemed a creditor of the bankrupt to the extent of such injury, and the debt is made proveable under the bankruptcy; s. 23. If the trustee does not disclaim, he can still subsequently refuse to perform the contract, and the other party is only entitled to prove for damages for the breach against the bankrupt's estate; he cannot treat the trustee as having adopted the contract; *In re Sneezum*, 3 Ch. D. 463; 45 L. J. B. 137.

(a) 16 & 17 Vict. c. 70, s. 122; Jud. Act, 1875, O. xviii.; Dart, 1003.

ground of fraud or misrepresentation (*b*), it is not rendered absolutely void by either; it is merely voidable at the option of the party defrauded (*c*); who may either rescind the contract and recover any moneys that he has paid under it (*d*), together with damages by way of compensation (*e*), or affirm the contract and insist upon the representation being made good, if that be possible (*f*). If goods have been delivered under a contract which the purchaser has a right, and has elected, to rescind (*g*), and the vendor does not take them back, after the purchaser has, within a reasonable time, given him notice that he will not accept them, and that they are at the vendor's risk, the loss will fall upon the vendor, if any accident happen to the goods without neglect on the part of the purchaser (*h*).

and innocent misrepresentation.

"There is, however, a very important difference between cases where a contract may be rescinded on account of fraud, and those in which it may be rescinded on the ground that there is a difference in substance between the thing bargained for and that obtained. It is enough to show that there was a fraudulent representation as to any part of that which induced the party to enter into the contract which he seeks to rescind; but where there has been a mere innocent misrepresentation or misapprehension, it does not authorize a rescission, unless it is such as to show that there

(*b*) See *ante*, pp. 50—60.

(*c*) *Oakes v. Turquand*, L. R. 2 H. L. 325, 346; 36 L. J. Ch. 949; *Dawes v. Harness*, L. R. 10 C. P. 166; 44 L. J. C. P. 194.

(*d*) *Torrance v. Bolton*, L. R. 8 Ch. 118; 42 L. J. Ch. 177; *Attorney-General v. Ray*, L. R. 9 Ch. 397; 43 L. J. Ch. 478.

(*e*) *Dart*, 105; *Kinnaird v. Smith*, W. N. 1881, 82.

(*f*) *Pulford v. Richards*, 17 Beav. 87, 95; *Rawlins v. Wickham*, 3 De G. & J. 304; or bring an action to recover damages for the loss which he has sustained; see *Poulton v. Lattimore*, 9 B. & C. 259.

(*g*) See *post*, p. 192, note (*n*).

(*h*) *Okell v. Smith*, 1 Stark. 107; *Grimoldby v. Wells*, L. R. 10 C. P. 391; 44 L. J. C. P. 203.

is a complete difference in substance between what was supposed to be, and what was, taken, so as to constitute a failure of consideration. For example, where a horse is bought under a belief that it is sound, if the purchaser was induced to buy by a fraudulent representation as to the horse's soundness, the contract may be rescinded. If it was induced by an honest misrepresentation (i) as to its soundness, though it may be clear that both vendor and purchaser thought that they were dealing about a sound horse and were in error, yet the purchaser must pay the whole price, unless there was a warranty; and, even if there was a warranty, he cannot return the horse and claim back the whole price, unless there was a condition to that effect in the contract" (j).

And, to entitle one of the parties to avoid the contract on the ground of fraud, the fraud must have been committed by, or with the assent of, the other party (k), or his authorized agent (l), and he must himself have been innocent of fraud in the transaction (m); and he must not, after becoming fully aware of the fraud, have elected to affirm

When fraud
not ground
for rescis-
sion.

(i) Cf. *ante*, pp. 56, 117.

(j) *Per* Blackburn, J., delivering the judgment of the court, in *Lord Kennedy v. Panama &c. Mail Co.*, L. R. 2 Q. B. 580, 587; 8 B. & S. 571; 15 W. R. 1039; to which he expressed his adherence in *Mackay v. Dick*, 6 App. Cas. 251, 265; 29 W. R. 541. As to purchaser's remedy for breach of warranty, see *post*, p. 204.

(k) *Smith's Case*, L. R. 2 Ch. 604, 606.

(l) See *ante*, p. 34.

(m) *Scholefield v. Templer*, 4 De G. & J. 429, 433; *Vane v. Vane*, L. R. 8 Ch. 383; 42 L. J. Ch. 299. A party cannot avoid a contract by his own wrong. Thus, where a purchaser refused to pay the auction-duty pursuant to the conditions of sale, it was held, notwithstanding the statute 17 Geo. III., c. 50, s. 8 (now repealed), which enacted that upon such refusal the bidding should be null and void, that the purchaser could not on that ground rescind the contract, but that the contract was only voidable at the option of the vendor; *Malins v. Freeman*, 4 Bing. N. C. 395.

the contract, or have lain by (*n*). Nor will the contract be rescinded, if the other party cannot be restored to his former position (*o*), or if the rights of innocent third parties have intervened (*p*).

Effect of fraud upon the property in goods.

On a sale of goods procured by fraud, the property in the goods is transferred by the contract, subject, as between the seller and the buyer, to its being revested in the seller, when he is the party defrauded, upon his exercising his option to rescind; but a purchaser in good faith from a fraudulent buyer acquires an indefeasible title (*q*).

The contract, how proved.

When the contract is not in writing, nor required by law to be in writing, the terms are, of course, collected from parol evidence; but when it has been reduced into writing, the writing constitutes the contract. If there be a discrepancy between the words and the writing, the latter will, as a matter of law, prevail (*r*). The construction put by the courts on the conditions of sale which are commonly made part of the written contract has been already considered (*s*). It is now proposed to point out the usual remedies when either of the parties is in default, and by whom and against whom they may be enforced.

Party suing must not be in default.

Before either party to an agreement brings an action upon it against the other, he must be prepared to prove

(*n*) *Vigers v. Pike*, 8 Cl. & Fin. 562. He must rescind within a reasonable time after discovering the fraud; *Campbell v. Fleming*, 1 A. & E. 40; *Sharpley v. Louth & East Coast Ry. Co.*, 2 Ch. D. 663.

(*o*) *Sheffield Nickel Co. v. Unwin*, 2 Q. B. D. 214, 223; 46 L. J. Q. B. 299.

(*p*) *White v. Garden*, 10 C. B. 919.

(*q*) *Babcock v. Lawson*, 5 Q. B. D. 284; 49 L. J. Q. B. 408. Even where goods have been obtained by false pretences; *Moyce v. Newington*, 4 Q. B. D. 32; 48 L. J. Q. B. 125; provided that there has really been a contract; *Cundy v. Lindsay*, 3 App. Cas. 459; 47 L. J. Q. B. 481.

(*r*) *Knight v. Barber*, 16 M. & W. 66, 69; 16 L. J. Ex. 18.

(*s*) *Ante*, Chap. V.

that he has performed, or been ready and willing to perform, his own part of it.

When the subject of sale is land, it is, as a rule, incumbent on the vendor to show a good title, to prepare and furnish an abstract of the same at his own expense (*t*) and to be ready to execute a conveyance according to the terms of the contract (*u*). If the title is good as to part only (*v*), or if the vendor has incurred a forfeiture, as by breach of a covenant to insure (*w*), the purchaser may be able to obtain a proportionate abatement of the purchase-money or to rescind the contract.

On a sale of goods there is, in general, an implied warranty of title, and the vendor cannot recover the price from the purchaser, if the latter has been obliged to deliver them to a third party on account of the vendor's want of title (*x*); unless it appear from the circumstances of the sale that the vendor did not intend to assert ownership; as, where he sold in a particular capacity, for instance, as auctioneer, sheriff, pawnbroker &c. (*y*). Where unredeemed

Duty of
vendor,
on sale
of land ;

on sale of
goods.

(*t*) *Ante*, pp. 84, 94 *et seq.*; Sugd. 406; Dart, 125; Add. Con. 395. A purchaser may waive his right to a good title, but such waiver must be in writing; *Goss v. Lord Nugent*, 5 B. & Ad. 58.

(*u*) *Poole v. Hill*, 6 M. & W. 835; Dart, 959. As to the purchaser's right to have separate conveyances in lots on payment of the additional expense, see *Earl of Egmont v. Smith*, 6 Ch. D. 469; 46 L. J. Ch. 566.

(*v*) *Ante*, p. 70; Dart, 1076; Sugd. 315.

(*w*) *Wilson v. Wilson*, 14 C. B. 616; 2 C. L. R. 818; 23 L. J. C. P. 137; 18 Jur. 581. It is, moreover, the duty of the vendor to keep the land let and in cultivation until completion of the purchase; *Earl of Egmont v. Smith*, *ubi supra*. As to the respective rights of the parties to windfalls, crops &c., see Dart, 247.

(*z*) Add. Con. 489; Beuj. 511; *Pasley v. Freeman*, 3 T. R. 51, 57. If the purchaser has paid the vendor, he can recover back the money; *Eichholz v. Bannister*, 17 C. B. N. S. 708; 34 L. J. C. P. 105; cf. *Adamson v. Jarvis*, 4 Bing. 66, 73.

(*y*) *Simms v. Marryat*, 17 Q. B. 281; 20 L. J. Q. B. 458; Leake, 109, 402; Add. Con. 490; always supposing that there was no fraud, such as selling while knowing that he had no title; *Peto v. Blades*,

pledged goods were put up for sale by auction, it was held that the pawnbroker did not assert that he had a good title, but merely that the goods had been pledged with him and were not redeemed (z). So, on a sale by a sheriff, the sheriff does not warrant his title to sell, but merely asserts that he does not know of any defect in his title or authority to sell (a). Where a boiler was sold by auction, under a distress for a poor-rate, to the defendant, who subsequently resold it to the plaintiff, after acquainting him with the circumstances, and the mortgagees of the premises prevented the plaintiff from removing it, it was held that the plaintiff could not recover the price of the boiler from the defendant (b). The vendor must also have been ready and willing to deliver the goods according to the contract; though he will be excused from delivering them at the time specified, if the purchaser has requested him to postpone delivery (c). And, in the absence of a condition to the contrary, the seller must afford the buyer an opportunity of inspecting the goods before accepting them, in order to see whether they are the goods that he bargained for (d).

Duty of
purchaser,
on sale of
land;

Unless otherwise agreed, it is the duty of the purchaser, at his own expense, to prepare and tender to the vendor a deed of conveyance, and to be ready to pay the amount due in respect of purchase-money, and interest, if any; unless the vendor is unable to show a good title, or has incapacitated

5 Taunt. 657. As to the auctioneer's liability to the real owner in such cases, see *ante*, p. 35.

(z) *Morley v. Attenborough*, 3 Ex. 500; 18 L. J. Ex. 148.

(a) *Chapman v. Speller*, 14 Q. B. 621; 19 L. J. Q. B. 241. The real owner may affirm the sale and claim the proceeds from the sheriff; *Oughton v. Seppings*, 1 B. & Ad. 241.

(b) *Baguley v. Hawley*, L. R. 2 C. P. 625; 36 L. J. C. P. 328.

(c) *Plevins v. Downing*, 1 C. P. D. 220; 45 L. J. Q. B. 695.

(d) *Isherwood v. Whitmore*, 11 M. & W. 347.

himself, as by conveying the estate to another, from completing the contract (e).

On a sale of goods, the purchaser must have been ready and willing to accept and pay for the goods. But where goods are to be delivered and paid for by instalments, mere non-payment of an instalment does not necessarily deprive the purchaser of his right to delivery of the remainder of the goods (f), unless it amounts to an absolute refusal on his part to perform the contract, or takes place under such circumstances as to give the seller reasonable ground for believing that the purchaser will be unable to pay the future instalments (g).

If a conveyance has been executed, and the purchaser refuses to pay the purchase-money, the vendor can recover the amount, together with interest on the same from the day on which it ought to have been paid (h).

But if the purchaser refuses to execute a conveyance, and the right of property remains in the vendor, the latter cannot sue for the purchase-money (i), but may bring an action for damages, in which he can claim the expenses incurred in preparing for the sale, and the difference, if any, between the price agreed to be paid and, if he resell, the price realized upon the resale (j), or, if he keep the property in his own

Vendor's remedies on sale of land : action for purchase-money ; for damages ;

(e) Dart, 959 ; Add. Con. 412 ; Sugd. 241 ; *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582, where it was held that a purchaser in possession was not entitled to execution of the conveyance, until he had paid the purchase-money.

(f) But he will be liable in damages to the vendor for such non-payment ; see *Freeth v. Burr*, *ubi inf.*

(g) *Freeth v. Burr*, L. R. 9 C. P. 208 ; 43 L. J. C. P. 91 ; *Bloomer v. Bernstein*, *ib.* 588 ; *Honck v. Muller*, 7 Q. B. D. 92 ; 50 L. J. Q. B. 529. As to bankruptcy of purchaser, see *post*, p. 201.

(h) Dart, 957 ; Add. Con. 416 ; Leake, 1070. As to the right to interest, see Dart, 627 *et seq.* ; Sugd. 628 ; *ante*, 104.

(i) *Laird v. Pim*, 7 M. & W. 474.

(j) See *ante*, pp. 108 *et seq.* It seems that, even in the absence of

hands, the presumed market value of the land (*k*). If, upon resale, the estate produce more than the original purchase-money, the vendor is entitled to retain the surplus (*l*). Where the purchaser has taken possession of the land before execution of the conveyance, he must pay interest upon the purchase-money, pending the completion of the contract (*m*); and if he subsequently refuse to perform the contract, he is liable for the use and occupation of the land from the date of such refusal (*n*). A purchaser cannot elect to forfeit his deposit and avoid the contract (*o*); but where a deposit has been paid, the vendor must bring it into account on seeking to recover for the loss occurring upon a resale of the property (*p*).

for specific
perform-
ance,

Or the vendor may bring an action for specific performance (*q*) of the contract, claiming damages for any loss that he may have suffered from its non-performance (*r*). And now he may prefer an alternative claim for damages for breach of the contract in the event of the court refusing to grant him specific performance (*s*).

of a parol
agreement,

And a court of equity will decree specific performance of

express stipulation, the vendor has a right to resell and to charge the purchaser with the deficiency; *Noble v. Edwardes*, 5 Ch. D. 378.

(*k*) Add. Con. 416.

(*l*) Dart, 163.

(*m*) *Ballard v. Shutt*, 15 Ch. D. 122.

(*n*) *Howard v. Shaw*, 8 M. & W. 118.

(*o*) Dart, 1227; Sugd. 119.

(*p*) *Ockenden v. Henly*, E. B. & E. 485; 27 L. J. Q. B. 361; 4 Jur. N. S. 999; *Essex v. Daniell*, L. R. 10 C. P. 538; 32 L. T. N. S. 476.

(*q*) This action must be brought in the Chancery Division; Jud. Act, 1873, s. 34.

(*r*) *Jacques v. Millar*, 6 Ch. D. 153. And the ordinary rules as to payment of interest by the purchaser apply; *In re Pigott & the Great Western Ry. Co.*, 18 Ch. D. 146, 150.

(*s*) *Tamplin v. James*, 15 Ch. D. 215, 222; 29 W. R. 311; 43 L. T. N. S. 50; *Thompson v. Ringer*, W. N. 1881, 48; Jud. Act, 1875, O. xix., r. 8.

a parol agreement within the 4th section of the Statute of Frauds in the following cases (*t*): 1. where the defendant has by fraud prevented a compliance with the statute (*u*); 2. where the defendant by his pleadings admits the agreement (*v*); 3. where there has been a part performance by the plaintiff.

The part performance must be "an act such that the Court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, according to their legal rights, they would be in if there were no contract" (*w*). Delivery of possession is sufficient (*x*), provided that it is not merely a constructive delivery. Where a person who had purchased at an auction certain market-tolls belonging to a corporation paid a month's rent in advance and received the keys from the person in charge of the market, through an error on the part of the latter and contrary to the directions of the town-clerk, this was held not to be such a part performance on his part as would entitle him to maintain an action for specific performance (*y*);

(*t*) Dart, 1023.

(*u*) *Lincoln v. Wright*, 4 De G. & J. 16; *Haigh v. Kaye*, L. R. 7 Ch. 469. It is not fraud in a purchaser to decline to sign the fair copy of an agreement he had assented to when in draft, and which he had promised to sign as soon as the fair copy was made; *Wood v. Midgley*, 2 Sm. & G. 115.

(*v*) It must be remembered that a defence founded on the Statute of Frauds cannot now be raised by demurrer; Jud. Act, 1875, O. xix., r. 23; *Catling v. King*, 5 Ch. D. 660; 46 L. J. Ch. 384; *Shardlow v. Cotterell*, W. N. 1881, 2.

(*w*) *Per Wickens, V.-C.*, in *Dale v. Hamilton*, 5 Hare, 369, 381; cf. *Coles v. Pilkington*, L. R. 19 Eq. 174; *Williams v. Evans*, *ib.* 547.

(*x*) *Ungley v. Ungley*, 5 Ch. D. 887; 46 L. J. Ch. 854; *Alderson v. Maddison*, 7 Q. B. D. 174, 180; 50 L. J. Q. B. 466; and see the judgments in *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48.

(*y*) *Mayor of Kidderminster v. Hardwick*, L. R. 9 Ex. 13; 43 L. J. Ex. 9.

for payment of a part (*z*), or even of the whole (*a*), of the purchase-money is not by itself sufficient ; since it may be repaid, and then the parties will be just as they were before. Where several lots are purchased separately, acts of part performance with regard to one will not make good a verbal agreement as to the others (*b*). The acts done, moreover, must not be merely introductory or ancillary to the agreement, such as delivery of an abstract of title, giving orders for a conveyance to be drawn or engrossed, going to view the estate, employing appraisers to value the stock, and the like (*c*) ; “they must be such as are unequivocally referable to the agreement ; . . . it is not sufficient that the acts are consistent with the existence of some agreement, unless such agreement has reference to the subject-matter” (*d*). A wrongful obtaining of possession by the purchaser does not amount to an act of part performance by the vendor (*e*). The acts done must have been performed by the party seeking specific performance, and not by the party to be charged ; for if the latter repudiate the contract, after acts of part performance on his part only, the loss falls on him alone, and there is no fraud upon the former (*f*).

Specific
perform-
ance, when
refused.

As a general rule, specific performance will be refused on the following grounds : that damages will afford a sufficient compensation (*g*) ; that the contract was in breach of

(*z*) *Clinan v. Cooke*, 1 Sch. & L. 22, 40.

(*a*) *Hughes v. Morris*, 2 De G. M. & G. 349, 356 ; cf. *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48, 61.

(*b*) *Buckmaster v. Harrop*, 13 Ves. 456, 474.

(*c*) Notes to *Lester v. Foxcroft*, 1 W. & T. L. C. 828, 833.

(*d*) *Per cur.* in *Alderson v. Maddison*, 7 Q. B. D. 174, 178 ; 50 L. J. Q. B. 466.

(*e*) *Cole v. White*, cited in *Whitbread v. Brockhurst*, 1 Br. Ch. 403, 409.

(*f*) *Buckmaster v. Harrop*, 7 Ves. 341, 346 ; notes to *Lester v. Foxcroft*, 1 W. & T. L. C. 828.

(*g*) Dart, 985 ; notes to *Cuddee v. Rutter*, 1 W. & T. L. C. 786.

trust (*h*), or was impossible to perform (*i*); that the enforcement of it would involve a breach of a prior contract (*j*), or be a fraud upon the public (*k*); or that the plaintiff was guilty of misrepresentation (*l*).

When the property in goods has vested in the purchaser (*m*), and he refuses to pay for them, the vendor's remedy is an action for the price (*n*), and, under certain circumstances (*o*), for interest by way of damages. He is not, as a rule, justified in reselling the goods, even though they remain in his possession (*p*) and subject to his lien (*q*). If he resell the goods, he may still sue the purchaser for the price, leaving the latter to bring a cross-action for the wrongful taking, the measure of damages in which would be the value of the goods when retaken (*r*). Thus, where an auctioneer received a bill of exchange in payment of goods which he had sold and delivered to the purchaser's agent, and, on the bill being dishonoured, retook and resold the goods, it was held, in an action by him upon the bill, that he was entitled to recover the full amount, and that the purchaser's remedy was an action for the tortious taking (*s*). If the seller of goods, being in

Vendor's remedies on sale of goods: action for the price;

re-sale

and action for damages;

(*h*) *Tolson v. Sheard*, 5 Ch. D. 19; 46 L. J. Ch. 815.

(*i*) *Green v. Smith*, 1 Atk. 573; *Denton v. Stewart*, 1 Cox, 258; *Greenaway v. Adams*, 12 Ves. 395.

(*j*) *Willmott v. Barber*, 15 Ch. D. 96.

(*k*) *Post v. Marsh*, 16 Ch. D. 395.

(*l*) *Ante*, pp. 51, 53.

(*m*) See *ante*, pp. 185 *et seq.*

(*n*) Add. Con. 471; Leake, 1057.

(*o*) See 3 & 4 Will. IV. c. 42, s. 28, *post*, p. 439.

(*p*) *Martindale v. Smith*, 1 Q. B. 395; *Page v. Cowasjee Eduljee*, L. R. 1 P. C. 127. Mere non-payment does not rescind the contract; see *Ex parte Whittaker*, L. R. 10 Ch. 446.

(*q*) See *ante*, p. 187, as to vendor's lien.

(*r*) In ordinary cases this would be the amount realized upon the resale. As to counterclaim instead of cross-action, see Jud. Act, 1873, s. 24, sub-s. 3.

(*s*) *Stephens v. Wilkinson*, 2 B. & Ad. 320; cf. *Page v. Cowasjee Eduljee*, *ubi sup.*

possession of them, gives express notice to the purchaser that they will be resold, unless removed and paid for within a reasonable time from the receipt of the notice, and that he will hold the latter liable for loss, he will be entitled, in a reasonable time, to resell the goods, and to sue for the difference between the price realized and that agreed upon, together with the expenses of the resale, as damages occasioned by the breach of contract (*t*). On sales by auction, the conditions generally reserve to the vendor a right to resell on the purchaser making default, and to charge the latter with the loss. In such a case, the original sale is conditional only, and is rescinded on the right being exercised, and the vendor's remedy is not an action for the price, but a special action for the loss of the price and the expenses of the resale (*u*). The vendor is, however, bound by the conditions, and must not sell the goods in a different manner than is specified in the conditions, or before the expiry of the time granted to the purchaser in which to remove them (*v*). And where a deposit has been paid, it must be brought into account by a vendor who seeks to charge a purchaser with the loss incurred on a resale (*w*).

If the right of property has not passed, the vendor must not sue for the price, for he cannot have both that and the goods, but should bring an action against the purchaser for not accepting them, and the measure of damages will be the difference between the price agreed to be paid and the

(*t*) *M'Lean v. Dunn*, 4 Bing. 722; 1 Moo. & P. 780. Nor would the purchaser be entitled to bring a cross-action for trover; *Page v. Cowasjee Eduljee*, *ubi sup.*

(*u*) *Lamond v. Devalle*, 9 Q. B. 1030; 16 L. J. Q. B. 136; 11 Jur. 266.

(*v*) *Woolfe v. Horne*, 2 Q. B. D. 355; 46 L. J. Q. B. 534.

(*w*) *Ockenden v. Henly*, E. B. & E. 485; 27 L. J. Q. B. 361; 4 Jur. N. S. 999. As to forfeiture of deposit, see *ante*, pp. 178 *et seq.*

market value of the goods at the time of breach (which may be ascertained by a resale in a reasonable time after the purchaser's refusal to accept the goods), together with the expenses incurred by the vendor in fulfilling his part of the contract, and the costs of the resale, if there was one (*x*). A purchaser cannot avoid his liability to pay damages by giving notice to the vendor of his intention not to accept: an unconditional renunciation of a contract before the time for performance amounts to a breach at the option of the promisee (*y*).

Specific performance of a contract relating to personal property is enforced only in special cases (*z*); as, where the subject-matter consists of articles of unusual beauty, rarity and distinction (*a*), or of railway shares of which there is only a limited number in the market (*b*). action for specific performance.

It has already been seen (*c*) that the vendor has, in case of the purchaser's insolvency, a right of stoppage *in transitu*. If the purchaser becomes bankrupt, and the goods are still in the vendor's possession, the latter may, if the trustee in the bankruptcy declines to adopt the contract (*d*), resell them and prove against the bankrupt's estate for the difference between the contract price and the price obtained on the resale (*e*). Where purchaser bankrupt.

(*x*) Add. Con. 471; *Leake*, 1057; *Boorman v. Nash*, 9 B. & C. 145; *Philpotts v. Evans*, 5 M. & W. 475. The measure of damages is the same in an action for not accepting shares; *Stewart v. Cauty*, 8 M. & W. 160; *Pott v. Flather*, 16 L. J. Q. B. 366; 11 Jur. 735.

(*y*) *Frost v. Knight*, L. R. 7 Ex. 111; 41 L. J. Ex. 78.

(*z*) As damages generally afford a sufficient compensation; see *ante*, p. 198.

(*a*) *Falcke v. Gray*, 1 Drew. 658.

(*b*) *Dart*, 986; *Shaw v. Fisher*, 2 De G. & S. 11; *Wynne v. Price*, 3 De G. & S. 310; *Doloret v. Rothschild*, 1 Sim. & St. 598; *Duncuft v. Albrecht*, 12 Sim. 189.

(*c*) *Ante*, p. 188.

(*d*) See *ante*, p. 189.

(*e*) *Ex parte Stapleton*, 10 Ch. D. 586.

Purchaser's
remedies
on sale of
land :
action on
the cove-
nants ;
action for
damages ;

If, on a sale of land, the conveyance has been executed, the purchaser has, in general (*f*), no remedy for any defects in the title to, or the quantity or quality of, the estate, except upon the vendor's covenants, if there are any (*g*).

If the vendor refuses, or is unable, to execute a conveyance, or cannot show a good title (*h*), the purchaser's remedy is an action for breach of the contract, in which he may recover his deposit, and interest on the same (*i*), and his expenses (*j*), as special damage. Under the last mentioned head will also be included the expenses of comparing deeds, searching for judgments, making journeys for those purposes (*k*), preparing the agreement, &c. (*l*), and also interest on the purchase-money, if it has been lying idle pending an endeavour by the vendor to clear up the title (*m*) ; but not expenses incurred previously to entering into the contract, nor the expense of a survey of the estate, or of a conveyance drawn up in anticipation of a completion of the purchase (*n*), nor the extra costs of a chancery suit touching the purchase, in which the vendor was defeated, nor losses sustained by a resale of stock prepared for the estate (*o*), nor damages for loss of the bargain, unless the vendor has not acted *bond*

(*f*) Viz., where the vendor has not been guilty of fraud.

(*g*) Dart, 777 ; *Clare v. Lamb*, L. R. 10 C. P. 334 ; 44 L. J. C. P. 177 ; cf. *ante*, p. 52, note (*c*).

(*h*) The Court will in some cases enlarge the time for showing a good title ; Dart, 418.

(*i*) See *ante*, pp. 180, 181.

(*j*) Provided that there is a valid contract ; *Gosbell v. Archer*, 2 A. & E. 500 ; 4 N. & M. 485 ; 1 H. & W. 31.

(*k*) *Hodges v. Earl of Litchfield*, 1 Bing. N. C. 492 ; 1 Sco. 443 ; 1 Hodg. 70.

(*l*) *Handlip v. Padwick*, 5 Ex. 615 ; *Richardson v. Chasen*, 10 Q. B. 756 ; *Powell v. Powell*, L. R. 19 Eq. 422 ; 44 L. J. Ch. 311.

(*m*) *Sherry v. Oke*, 3 Dow. P. C. 349.

(*n*) Unless the sale go off by reason of a concealed incumbrance ; Dart, 949 ; Sugd. 362.

(*o*) *Hodges v. Earl of Litchfield*, *ubi sup.*

fide or has not done all that he could to fulfil the contract (*p*).

It is also open to the purchaser to bring an action for specific performance. The remarks already made (*q*) on this kind of action are, *mutatis mutandis*, as applicable, when the purchaser is plaintiff, as when the action is brought by the vendor.

Where, when the subject of sale is goods, the right of property has passed (*r*), and the vendor wrongfully retakes possession of the goods, after they have been delivered to the purchaser, the latter may recover their full value in an action for their conversion, the vendor having his remedy in a cross-action for the price, if that remains unpaid (*s*). If the vendor has not delivered, and refuses, or is unable, to deliver, the goods, the purchaser may bring an action, if the right of property has passed, for their conversion, or, if it has not passed, for damages for breach of contract. In either case the measure of damages is the difference between the price agreed to be paid and the market value of the goods at the time and place when and where they ought to have been delivered (*t*), together with so much of the purchase-money as has been paid (*u*), and interest

action for specific performance.

Purchaser's remedies on sale of goods : action for conversion ;

action for breach of contract ;

(*p*) Dart, 951 *et seq.*, discussing *Bain v. Fothergill*, L. R. 7 H. L. 158 ; 43 L. J. Ex. 243 ; and see *Leake*, 1071 ; Add. Con. 417.

(*q*) *Ante*, pp. 196 *et seq.*

(*r*) See *ante*, p. 185.

(*s*) *Gillard v. Brittan*, 8 M. & W. 575 ; *Stephens v. Wilkinson*, 2 B. & Ad. 320. See *supra*, p. 199, note (*r*).

(*t*) Add. Con. 472 ; *Leake*, 1058 *et seq.* ; *Gainsford v. Carroll*, 2 B. & C. 624 ; *Williams v. Reynolds*, 6 B. & S. 495 ; 34 L. J. Q. B. 221 ; *Martindale v. Smith*, 1 Q. B. 389 ; *Chinery v. Viall*, 5 H. & N. 288 ; 29 L. J. Ex. 180 ; *Hinde v. Liddell*, L. R. 10 Q. B. 265 ; 44 L. J. Q. B. 105 ; *Frame v. Gaudet*, L. R. 6 Q. B. 199 ; 40 L. J. Q. B. 121 ; *Roper v. Johnson*, L. R. 8 C. P. 167 ; 42 L. J. C. P. 65.

(*u*) See *ante*, p. 180, as to recovery of deposit.

thereon (*v*). But the purchaser cannot recover for loss of profit on a resale, unless the vendor had notice of his intention to resell (*w*).

action for
delivery of
the goods.

Or the purchaser may, when specific goods have been sold for a price in money, obtain delivery of the goods themselves (*x*).

Breach of
warranty ;

Where a specific and ascertained article is sold absolutely, with a warranty, the purchaser cannot, in general (*y*), upon breach of the warranty, return the article and recover the price, if paid, or resist an action for the price, if unpaid ; he may, however, offer to return it, and, on the vendor's refusal to receive it, sell the article and recover the difference in an action for breach of warranty, or set it off in an action brought by the vendor for the price (*z*). But if the sale is conditional upon the warranty being fulfilled, then the purchaser may, upon breach, return the article and recover the price, notwithstanding that some accident may have happened to the article in the meanwhile, provided always that there has been no negligence on his part ; he cannot, however, return it, or recover damages, when the time over

(*v*) *Sartup v. Cortazzi*, 2 C. M. & R. 165.

(*w*) *Williams v. Reynolds*, 6 B. & S. 495 ; 34 L. J. Q. B. 221 ; *Hadley v. Bazendale*, 9 Ex. 341 ; 23 L. J. Ex. 179 ; *Hydraulic Engineering Co. v. M'Haffie*, 4 Q. B. D. 670. On a sale of shares the purchaser cannot recover damages in respect of any further advance in price taking place after the day on which the sale ought to have been completed ; *Shaw v. Holland*, 15 M. & W. 136 ; *Tempest v. Kilner*, 3 C. B. 253.

(*x*) See 19 & 20 Vict. c. 97 (Mercantile Law Amendment Act, 1856), s. 2, *post*, p. 438. See also *ante*, p. 201, as to specific performance of a contract for the sale of goods.

(*y*) *Aliter*, where the purchaser has been induced to enter into the contract by means of a fraudulent warranty ; *Murray v. Mann*, 2 Ex. 538 ; 17 L. J. Ex. 256 ; *Stevens v. Legh*, 2 C. L. R. 251.

(*z*) *Street v. Blay*, 2 B. & Ad. 456, 462 ; *Lord Kennedy v. Panama &c. Mail Co.*, L. R. 2 Q. B. 580, 587 ; *ante*, p. 191 ; *Couston v. Chapman*, L. R. 2 H. L. Sc. 250, 254.

which the warranty was to be in force was limited by the conditions and expired before he discovered the breach (*a*). On a sale of specific goods by sample (*b*), with a guarantee on sale by sample, that they are similar to sample, the purchaser has no right to return them on discovering defects, but must sue on the breach of warranty (*c*); but he is entitled to inspect the goods in order to ascertain whether they are the goods he bargained for, unless he has already had an opportunity of inspecting them and it was part of the contract that they were to be taken without further examination (*d*). And if the sale is conditional upon the goods being equal to sample, the purchaser has a right to reject them, if, after examining them without unreasonable delay, he finds them not conformable to sample; and he is not bound to return them, or even to place them in neutral custody, so long as he gives notice to the vendor of his refusal to accept them (*e*). Where the article sold is not specific or ascertained, or if something remains to be done to it by the seller, the purchaser may return it as soon as he discovers the breach, provided that

(*a*) *Bannermann v. White*, 10 C. B. N. S. 844; 31 L. J. C. P. 28; *Bywater v. Richardson*, 1 A. & E. 508; *Head v. Tattersall*, L. R. 7 Ex. 7; 41 L. J. Ex. 4; *Buchanan v. Parnshaw*, 2 T. R. 745, where it was held that a condition providing that a horse, warranted sound and six years old, should be deemed sound, unless returned within two days, applied only to the warranty of soundness and did not limit the warranty as to age.

(*b*) See *ante*, p. 118.

(*c*) *Heyworth v. Hutchinson*, L. R. 2 Q. B. 447; 36 L. J. Q. B. 720. But he would have a right to return them, if they were different from the sample in kind, and not only in quality; *Azémar v. Casella*, L. R. 2 C. P. 677; 36 L. J. C. P. 263.

(*d*) *Lorymer v. Smith*, 1 B. & C. 1; 2 D. & R. 23; *Isherwood v. Whitmore*, 11 M. & W. 347.

(*e*) *Grimoldby v. Wells*, L. R. 10 C. P. 391; 44 L. J. C. P. 203, dissenting from a dictum of Lord Chelmsford in *Couston v. Chapman*, L. R. 2 H. L. Sc. 250, 254, to the effect that, under such circumstances, the purchaser ought to return the goods or, on the vendor's refusal to receive them, to place them in neutral custody.

he has done nothing more in the meantime than was necessary to give it a fair trial (*f*).

Damages
for breach
of war-
ranty.

The damages recoverable for breach of warranty must be so far the natural consequence of the breach that they must have been in the minds of both the contracting parties at the time of the contract. Where the defendant sold a cow to the plaintiff, a farmer, with a warranty that she was free from foot-and-mouth disease, and the cow, which had the disease, was placed with other cows, some of which, becoming infected with the disease, died, as did also the cow sold, it was held that the defendant was liable for the entire loss, as he knew the plaintiff to be a farmer and knew, or ought to have known, that the plaintiff would probably place the cow with others (*g*). Again, where seed sold turned out different from what it was warranted to be, and a wrong crop came up, the purchaser was held entitled to recover the difference in the value of the crop as it was and as it ought to have been (*h*).

Parties to
an action :
principals ;

Parol evidence is admissible "to shew that one or both of the contracting parties were agents for other persons, and acted as such agents in making the contract, so as to give the benefit of the contract on the one hand to, and charge with liability on the other, the unnamed principals ;" but not so as to release a party who has signed the agreement

(*f*) *Street v. Blay*, 2 B. & Ad. 456, 463 ; *Heilbutt v. Hickson*, L. R. 7 C. P. 438, 449 ; 41 L. J. C. P. 228.

(*g*) *Smith v. Green*, 1 C. P. D. 92 ; 45 L. J. C. P. 29. But if there had been no warranty, the vendor would not have been liable, even if he had known that the animal was infected, provided he had done nothing amounting to misrepresentation or wilful concealment ; *Ward v. Hobbs*, 4 App. Cas. 13 ; 48 L. J. Q. B. 281 ; see *ante*, p. 116.

(*h*) *Randall v. Raper*, E. B. & E. 84 ; 27 L. J. Q. B. 266. The questions of the auctioneer's authority to warrant and his liability on a warranty have been already discussed, *ante*, p. 119.

and been treated by the other party as principal (i). But a principal cannot sue, if his name was undisclosed at the time the contract was made, and his agent was described or referred to in the contract in terms inconsistent with the idea of agency (j). And if a person has contracted as agent for a named principal, as, where a purchaser at a sale by auction signed the memorandum: "A. B. for C. D.," he cannot himself sue as principal without giving notice to the defendant, before action brought, that he is the party really interested (k). In such a case specific performance will be refused him, if it appears that the use of the name of the assumed principal was the inducement to the other party to enter into the bargain (l).

In general, an agent who contracts in the name of, and agents, as plaintiffs; intending to bind, his principal only, has no right of action upon the contract, unless he has himself an interest in it (m). Thus, where certain lands had been let by auction under conditions at the head of which was: "By Messrs. E. & T., auctioneers," and at the foot: "Approved by me, D. J.," it was held that the auctioneers could not sue for use and occupation, as it appeared from the conditions that D. J. was the party with whom the contract was made (n). But

(i) Thus, where a contract is signed by A., evidence is admissible to show that he acted as agent for B., provided that the object of such evidence is to charge B., and not to discharge A. See *Higgins v. Senior*, 8 M. & W. 834, 844; *Reid v. Draper*, 30 L. J. Ex. 268; 6 H. & N. 813; *Wake v. Harrop*, 31 L. J. Ex. 451; *Commins v. Scott*, L. R. 20 Eq. 11, 16; 44 L. J. Ch. 563, 564; *Beer v. London & Paris Hotel Co.*, L. R. 20 Eq. 412, 427, where Malins, V.-C., says that the vendor's name need not be disclosed till action brought.

(j) *Humble v. Hunter*, 12 Q. B. 310, where the agent was described as "owner."

(k) *Bickerton v. Burrell*, 5 M. & S. 383.

(l) *Phillips v. Duke of Buckingham*, 1 Vern. 227; Dart, 185.

(m) Add. Con. 38.

(n) *Evans v. Evans*, 3 A. & E. 132.

an agent may sue, if the name of his principal was not disclosed, unless the defendant contracted on the faith of his agency (*o*). Where handbills were circulated as follows: "Oxford Races The ground for booths &c. will be let by auction by Mr. J. F.," &c., and the conditions were headed: "Conditions for letting the standings, &c. . . . By Mr. J. F.," &c., it was held that, there being no named principal, there was evidence on which the jury might find that the contract was made with the auctioneer, and that he might sue for the use and occupation of land let at the auction, although he acted by direction of a race-committee who were permitted by the owners of the land to hold the races (*p*).

as defend-
ants ;

If the agent contracts as agent only, he is not liable on the contract (*q*), even though words are used which, taken alone, might render him so ; provided that the instrument evinces an intention that he shall not be liable. Where A., an auctioneer, employed by B. to sell an estate, entered into an agreement for the sale with C., in which he was described as B.'s agent, but which he signed in his own name without any qualification, and B. subsequently signed the contract, adding the words: "I hereby sanction this agreement and approve of A.'s having signed it on my behalf," A. was held not liable (*r*). But a party who, though really an agent, contracts personally, will be liable upon the contract, whether his principal was disclosed or not (*s*). Where catalogues

Woolfe
v. Horne.

(*o*) *Schmalz v. Avery*, 15 Jur. 291 ; see notes to *Thomson v. Davenport*, 2 Sm. L. C. 364.

(*p*) *Fisher v. Marsh*, 6 B. & S. 411 ; 34 L. J. Q. B. 177.

(*q*) *Southwell v. Bowditch*, 1 C. P. D. 374, where the defendant, a broker, who had signed a contract note in the following terms:—"I have this day sold by your order, and for your account, to my principals," &c., was held to have signed as agent only ; *Gadd v. Houghton*, 1 Ex. D. 357.

(*r*) *Spittle v. Lavender*, 2 B. & B. 452 ; 5 Moore, C. P. 270.

(*s*) *Higgins v. Senior*, 8 M. & W. 834, 844 ; *Franklyn v. Lamond*,

stated that H. and E., the defendants, would, on a named day, sell by auction certain unclaimed property, by order of the directors of the Great Western Railway Company, and there was a condition that: "If any deficiency shall arise, or from any cause the auctioneers shall be unable to deliver any lot or portion of a lot, then, in such case, the purchaser shall accept compensation," the condition was held to be evidence on which a jury were justified in finding that the auctioneers had contracted personally with a purchaser for the delivery to him of the goods purchased by him (t). Again, where A. became the purchaser of premises sold by auction, and immediately afterwards, in B.'s presence, declared himself the agent of B. and asked to have the contract drawn up in B.'s name, but, on this being refused, subsequently signed it himself, he was held personally liable on the contract, it not having been understood between him and the vendor that he was only acting as agent for B. (u). The case of *Williamson v. Barton* (v) illustrates the difficulty which frequently arises in determining whether or not it was the intention of the parties that the agent should bind himself. There, at an auction-sale of W.'s farming stock, some hay was knocked down to B., who, in reply to the auctioneer, gave his name as B. The auctioneer, believing that B. was buying for himself, wrote his name in the sale-book as buyer and sent the account to him. B. was the servant of S. and bid as his agent, and the hay was subsequently removed in S.'s carts. W. was present at the sale and heard what passed and knew

Williamson v. Barton.

4 C. B. 637; 16 L. J. C. P. 221; 11 Jur. 780; and see *Long v. Millar*, 4 C. P. D. 450; 48 L. J. Q. B. 596.

(t) *Woolfe v. Horne*, 2 Q. B. D. 355; 46 L. J. Q. B. 536.

(u) *Chadwick v. Maden*, 9 Hare, 188.

(v) 7 H. & N. 899; 2 F. & F. 544; 31 L. J. Ex. 170; 8 Jur. N. S. 341.

that B. was servant to S. and knew, or might have known, that he was bidding for S., and not for himself; but he did not interfere in the transaction. In an action by W. against B. for the price, the jury having found a verdict for the defendant, on motion for a new trial the court was equally divided in opinion, Pollock, C.B., and Bramwell, B., holding that there was evidence from which the jury might infer that no contract had been entered into between the plaintiff and the defendant, the latter judge holding further that W., by delivering the goods to S., had discharged B. from liability, if he was ever bound. On the other hand, Channell and Wilde, BB., held that there ought to be a new trial, that a party bidding at an auction and giving his own name simply to the auctioneer must be understood to be the contracting party, and that, if he is bidding only as agent, he ought to say so.

If the principal has been guilty of any wrong-doing in the transaction, the agent who has been party to the wrong-doing is equally liable with him, though, if he was an innocent party, he can recover over from his principal (*w*). Where a person contracts as agent for another, when he has in fact no authority to do so, he is not liable on the contract; but he may be liable for a false representation (*x*).

auctioneer,
on sale of
land;

The position of an auctioneer differs, in some respects, from that of an ordinary agent. Where the subject of sale is land, it has been said that, by reason of his right to bring

(*w*) *Adamson v. Jarvis*, 4 Bing. 66; 12 Moore, 241; *Attorney-General v. Ray*, L. R. 9 Ch. 397, 405; 43 L. J. Ch. 478; *Dugdale v. Lovering*, L. R. 10 C. P. 196; 44 L. J. C. P. 197; *Heatley v. Newton*, 30 W. R. 72; 45 L. T. N. S. 455.

(*x*) *Jenkins v. Hutchinson*, 13 Q. B. 744; *Lewis v. Nicholson*, 18 Q. B. 503; 21 L. J. Q. B. 311; *Collen v. Wright*, 7 E. & B. 301; 27 L. J. Q. B. 215; and see *Godwin v. Francis*, L. R. 5 C. P. 295, for measure of damages in such a case.

an action, and of his liability to account, for the deposit, he can be made a co-plaintiff with the vendor in an action for specific performance (*y*); and he is not unfrequently made a co-defendant in such an action (*z*). He can sue in his own name upon an I. O. U. that has been given to him in payment of the deposit (*a*).

On a sale of goods the auctioneer can, by virtue of his special property in the subject of sale, bring an action for the price in his own name, although he contracted as agent only (*b*), provided that his principal could have maintained the action. If his principal is proved not to have been the true owner, the auctioneer cannot sue the purchaser, even though the latter expressly promised to pay on being allowed to remove the goods (*c*). Nor can the auctioneer sue the purchaser, when he has acted as agent to bind the latter within the Statute of Frauds (*d*).
on sale of goods.

(*y*) Fry, 111, referring to Dan. Ch. Pr. 176.

(*z*) See *ante*, pp. 182, 183.

(*a*) *Cleave v. Moors*, 3 Jur. N. S. 48.

(*b*) *Robinson v. Rutter*, 4 E. & B. 954; 24 L. J. Q. B. 250; 1 Jur. N. S. 833; cf. *Holmes v. Tutton*, 5 E. & B. 65; 24 L. J. Q. B. 346; 1 Jur. N. S. 975; *Mills v. Hunt*, 20 Wend. 431; and see *ante*, p. 113. And it would appear that the purchaser has a correlative right to sue the auctioneer, even where the name of the vendor has been disclosed; see the observations of Field, J., in *Woolfe v. Horne*, 2 Q. B. D. 355, 360; 46 L. J. Q. B. 536.

(*c*) *Dickenson v. Naul*, 4 B. & Ad. 638; 1 N. & M. 721; cf. *Allen v. Hopkins*, 13 M. & W. 94, 102.

(*d*) See *ante*, p. 157.

CHAPTER XI.

INTERPLEADER.

Auctioneer's
right to
inter-
pleader.

A **STAKEHOLDER** from whom several persons claim the same goods or sum of money—for instance, an auctioneer of whom both the vendor and the purchaser demand deposit-money which he holds as stakeholder—can compel the rival claimants to interplead.

Former bill
of inter-
pleader.

This formerly he could only do by means of the tedious and expensive process of a suit in equity; but now all the divisions of the High Court of Justice have jurisdiction in interpleader (*a*).

Present
law.

The present law and practice relating to interpleader depend chiefly upon the Interpleader Act (*b*), the Common Law Procedure Act, 1860 (*c*), and the Judicature Acts and Rules.

Inter-
pleader
Act.

The Interpleader Act enacts that, upon application by a defendant sued in a superior court of law in any action of assumpsit, debt, detinue or trover, such application being made after declaration and before plea, by affidavit, or otherwise, shewing that the defendant does not claim any interest in the subject-matter of the suit, but that the right to it is

(*a*) Rules of the Supreme Court, O. I., r. 2.

(*b*) 1 & 2 Will. IV., c. 58.

(*c*) 23 & 24 Vict., c. 126.

claimed (by) or supposed to belong to a third party, who has sued or is expected to sue for it, and that the defendant does not collude with the third party, but is ready to bring the subject-matter of the action into court, or to deal with it as the court or a judge may direct, the court or a judge may order the third party to appear and maintain or relinquish his claim and may in the meantime stay proceedings in the action (*d*). If the third party does not appear, the court or judge can bar his claim against the defendant and make such order between the defendant and the plaintiff as to costs and other matters as may appear just (*e*). If he does appear, the court or judge can order him to make himself defendant in the same or some other action; or may direct the trial of an issue, or issues; or, by consent, may decide upon the claims in a summary manner (*f*).

In consequence of certain decisions tending to narrow the operation of the Interpleader Act (*g*), it was enacted by the Common Law Procedure Act, 1860 (*h*), that, where an action has been commenced in respect of a common law claim for the recovery of money or goods, and the defendant has applied for relief under the Interpleader Act, the court or a judge may grant relief by way of interpleader, though the titles of the claimants to the money or goods in question have not a common origin, but are adverse to and independent of one another (*i*).

(*d*) S. 1.

(*e*) S. 3.

(*f*) S. 1. As to the form of issues, see now 8 & 9 Vict., c. 109, s. 19.

(*g*) See *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450, 457; 47 L. J. C. P. 763; 38 L. T. 404; 26 W. R. 583.

(*h*) S. 12.

(*i*) S. 14 of the act gives power to the court or a judge, where the amount in dispute is small, to decide summarily at the request of either party. By s. 15, where the question is one of law, and the facts are not in dispute, the judge may decide it summarily, and, if he thinks it desir-

Judicature
Acts.

The Rules of the Supreme Court (*k*) now provide that "with respect to interpleader the procedure and practice now used by courts of common law under the Interpleader Acts, 1 & 2 Will. IV. c. 58, and 23 & 24 Vict. c. 126 (*l*), shall apply to all actions . . . and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence."

As to inter-
pleader
before
action
brought.

Before the Judicature Acts the Court of Chancery granted relief by way of interpleader to a stakeholder who was not being actually sued (*m*). Whether the jurisdiction to do this has been superseded by the new system of procedure, or is now vested in the High Court of Justice, remains to be seen. The better opinion appears to be that it still exists (*n*). It is true that the order of which the above cited rule forms part is intituled "Form and Commencement of Action;" but, on the other hand, the old jurisdiction in interpleader is nowhere expressly abolished, the jurisdiction of the old Court of Chancery is, subject to the new legislation, transferred to the High Court of Justice (*o*), and s. 25, sub-s. 6, of the Judicature Act, 1873, allows interpleader at the instance of a person liable in respect of a debt or chose in action who merely has notice of opposing claims (*p*).

Rules regu-

The courts of equity made the granting of relief by

able, order that a special case be stated. As to the right to appeal, see Wilson, Jud. Acts, 2nd ed., 130.

(*k*) O. L., r. 2.

(*l*) The C. L. P. A. 1860.

(*m*) *Jones v. Thomas*, 2 Sm. & G. 186; *Mealor v. Earl Talbot*, 27 L. J. Ch. 165.

(*n*) See Wilson's Jud. Acts, 2nd ed., 129; Seton, 361 *et seq.*; cf. *Hamlyn v. Beteley*, 6 Q. B. D. 63; 50 L. J. Q. B. 1.

(*o*) Jud. Act, 1873, s. 16.

(*p*) See *In re New Hamburg & Brazilian Railway Co.*, W. N. 1875, 239; *Lacey v. Wieland*, W. N. 1876, 24; cf. 1 & 2 Will. IV., c. 58, s. 6, and 1 & 2 Vict., c. 45, s. 2, as to sheriff's interpleader.

interpleader subject to a variety of conditions of which no mention is to be found in the Interpleader Acts (*q*). The courts of common law, in interpreting the Interpleader Acts, professed to observe the general principles, while declining to be bound by the minute rules of practice, adopted by the courts of equity (*r*). Owing to the difficulty, in many cases, of determining where principle ends, and where practice begins, it is impossible, in the present state of the authorities, to say with certainty when interpleader will be granted, and when it will be refused. The following observations are intended to convey the effect of the leading decisions upon the question, so far as it is more intimately connected with the subject-matter of this book.

1. Before a stakeholder will be entitled to interpleader, the property in respect of which he applies for it must be actually (*s*) and adversely (*t*) claimed from him. A mere pretext of a conflicting claim is not enough (*u*); nor is a mere refusal to assent to the payment of the fund to another claimant (*x*). Interpleader was refused an auctioneer, where, a dispute having arisen upon the contract, the vendor sued the auctioneer for the deposit, but the purchaser insisted on his right to have the contract performed (*y*). A notice to the auctioneer, that, if he pays over the deposit, he will do so at his own risk, appears,

1. The adverse claim.

(*q*) See *Cababé on Interpleader, passim*.

(*r*) See *Best v. Hayes*, 1 H. & C. 718; 3 F. & F. 113; 32 L. J. C. P. 129.

(*s*) *Isaac v. Spilsbury*, 3 M. & S. 341; 10 Bing. 3; *Bentley v. Hook*, 2 C. & M. 426; 4 Tyr. 229.

(*t*) *Glynn v. Locke*, 3 D. & W. 11; *Holmes v. Mentze*, 5 N. & M. 563; 4 A. & E. 127. The Interpleader Act is intitled "An act to enable courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims."

(*u*) *Cochrane v. O'Brien*, 2 J. & L. 380.

(*x*) *Desborough v. Harris*, 5 De G. M. & G. 439, 459.

(*y*) *Sharpe v. Redman*, Will. Woll. & D. 375; cf. *Harrison v. Payne*, 2 Hodg. 107.

however, to be a sufficient claim (z). If a *bonâ fide* claim has been made, the applicant is not bound to shew that it has a substantial foundation (a). Nor is it necessary that the claims should be coextensive (b); nevertheless, single proceedings in interpleader will not lie against the claimants to two separate independent funds: a bill of interpleader filed against A., B. and C. by an auctioneer who, having sold A.'s property to B., and resold it, for A., to C., had received a deposit from each of the two purchasers was dismissed with costs as against C. (c).

2. Pay-
ment
into court.

2. An applicant for interpleader must at the time of his application be willing and able to bring the property claimed into court, or to dispose of it as the court shall direct (d). A stakeholder who has parted with the property is not entitled to interpleader upon undertaking to pay over the value to the party entitled (e).

3. The auc-
tioneer's
lien.

3. Although the applicant must not himself claim any interest in the property in respect of which he applies, the fact that he claims a lien upon the deposit as against the vendor will not deprive an auctioneer of his right to interpleader, if his claim of a lien is allowed by the purchaser (f); and perhaps not in any case (g).

(z) *Hoggart v. Cutts*, Cr. & Ph. 197; cf. *In re New Hamburg & Brazilian Railway Co.*, W. N. 1875, 239.

(a) *East & West India Dock Company v. Littledale*, 7 Hare, 57, 60; *Angell v. Hadden*, 15 Ves. 244. It has been held that, if the applicant may be liable to both parties, he cannot interplead; *Farr v. Ward*, 2 M. & W. 844; M. & H. 244.

(b) *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450; 47 L. J. C. P. 763; 38 L. T. 404; 26 W. R. 583; *Wright v. Freeman*, 48 L. J. C. P. 276; 40 L. T. 134.

(c) *Hoggart v. Cutts*, Cr. & Ph. 197.

(d) *Anderson v. Calloway*, 1 C. & M. 182; *Braine v. Hunt*, 2 C. & M. 418; 4 Tyr. 243; 2 Dowl. P. C. 391; *Scott v. Lewis*, 2 C. M. & R. 289; *Holton v. Guntrip*, 3 M. & W. 145; *Inland v. Bushell*, 5 Dowl. P. C. 147.

(e) *Burnett v. Anderson*, 1 Mer. 405.

(f) *Best v. Hayes*, 1 H. & C. 718; 3 F. & F. 113; 32 L. J. C. P. 129.

(g) *Annesley v. Muggridge*, 1 Madd. 593; cf. *Farebrother v. Prattent*,

4. The applicant must be free from even the suspicion of colluding with a claimant (*h*). An auctioneer who had taken an indemnity from a claimant was held to have so far identified himself with him as to be disentitled to relief under the Interpleader Act (*i*). 4. Collusion.

The application by a defendant is made at chambers, by summons calling upon the claimant to appear and state his claim (*k*); a master (*l*) or district registrar (*m*) has jurisdiction (*n*), but a registrar of the Probate, Divorce and Admiralty Division has not, except in matters of practice, unless by consent (*o*). Practice.

The costs of the applicant, where he has acted *bonâ fide*, will, as a rule, in the first instance be directed to be paid out of the fund in dispute, to be repaid by the party ultimately unsuccessful (*p*). Costs.

5 Price, 303; *Colter v. Bank of England*, 3 Moo. & S. 180; 2 Dowl. 728; *Jacobson v. Blackhurst*, 2 J. & H. 486; *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450, 454; 47 L. J. C. P. 763; 38 L. T. 404; 26 W. R. 583; but see *Mitchell v. Hayne*, 2 S. & S. 63; *Braddick v. Smith*, 2 Moo. & S. 131; 9 Bing. 84; *Diplock v. Hamond*, 2 Sm. & G. 141.

(*h*) *Belcher v. Smith*, 9 Bing. 82; 2 Moo. & S. 184.

(*i*) *Tucker v. Morris*, 1 Cr. & M. 73; 1 Dowl. P. C. 639. A stakeholder is not bound to accept an indemnity from a claimant, although the latter shows an apparent title to the property in dispute; *East & West India Dock Company v. Littledale*, 7 Hare, 57; but see *Gladstone v. White*, 1 Hodg. 386.

(*k*) Wilson, Jud. Acts, 2nd ed., 129.

(*l*) R. S. C., O. LIV., rr. 2, 2 b.

(*m*) *Ib.*, O. XXXV., r. 4.

(*n*) "Except where all parties concerned consent to a final determination of the question in dispute without a jury or special case, and except where the sum in dispute is less than £50, and one of the parties desires such a determination; in such cases the question shall be determined by the judge, unless the parties agree to refer it to the master;" R. S. C., November, 1878, r. 4 (R. S. C., O. LIV., r. 2 b.).

(*o*) R. S. C., O. LIV., r. 2.

(*p*) *Reeves v. Barraud*, 7 Sco. 281; and see *Fairbrother v. Nerot*, Dan. 68, n.; *Campbell v. Solomons*, 1 S. & S. 462; *Pitchers v. Edney* (1838), 4 Bing. N. C. 721, where the costs of the auctioneer were allowed out of the deposit, and the purchaser was left to his remedy over against

separately will have to bear the costs of the successful party (q).

Trustee
Relief
Act.
O. XVI.,
r. 17.

A stakeholder may pay money into court under the Trustee Relief Act (r); and a defendant in an action has now a remedy analogous to interpleader in cases where interpleader would not strictly lie (s).

the vendor, although the latter was insolvent; but cf. *Deller v. Prickett* (1850), 15 Q. B. 1081; 20 L. J. Q. B. 151, where, the vendor having no other property than the real estate sold, the title to which was alleged to be defective, the auctioneer, claiming interpleader, when sued for the deposit by the purchaser, was subjected to the condition of giving security for costs, and was not allowed his costs of the application out of the deposit-money; *Aplin v. Cates*, 30 L. J. Ch. 6.

(q) *Laing v. Zeden*, L. R. 9 Ch. 736; 43 L. J. Ch. 626. See also *Seton*, 358; *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450, 466.

(r) *In re United Kingdom Life Assurance Co.*, 34 L. J. Ch. 554.

(s) Rules of the Supreme Court, O. XVI., r. 17; see *Tebbs v. Lewis*, W. N. 1875, 204.

CHAPTER XII.

THE AUCTIONEER'S COMMISSION AND RIGHT TO INDEMNITY.

AN auctioneer employed to conduct a sale is, in general, entitled to be remunerated for his trouble and to be indemnified for any loss that he may have incurred in the proper discharge of his duty (a). The amount of his remuneration, which generally takes the form of a commission, is fixed, sometimes by statute, but more commonly by contract or by custom. Auctioneer's commission.
The amount, how fixed.

The only cases in which an auctioneer's charges are regulated by statute are the cases of sales under distraints for rent (b) or for "land tax, assessed taxes, poor's rates, church rates, tithes, highways rates, sewer rates, or any other rates, taxes, impositions or assessments whatever" (c), where the sum demanded and due does not exceed £20 (d); sales of goods taken under executions issued by county By statute.

(a) As to the effect, in this connection, of his being unlicensed, see *ante*, p. 9.

(b) 57 Geo. III., c. 93, s. 1. See *post*, p. 281.

(c) 7 & 8 Geo. IV., c. 17. See *post*, p. 443.

(d) The statute 57 Geo. III., c. 93, has been held not to apply to the case of a distress for more than £20, though made upon goods appraised at, and sold for, less than £20; *Child v. Chamberlain*, 5 B. & Ad. 1049; 3 N. & M. 520; and the same principle would seem to hold good with respect to cases under 7 & 8 Geo. IV., c. 17.

courts (e) ; and sales of goods and estates in bankruptcy (f). Scales of the charges authorized in these cases will be found in Part II., *post* (g). No amount is fixed, either by statute or by general order, for sales by direction of the court.

By contract.

The amount, when not fixed by statute, should always be settled by previous agreement between the auctioneer and his employer. Usually it consists of a certain percentage upon the purchase-money, which may or may not include the expenses of advertising &c. (h) Where it is agreed between an agent and his principal that the former shall be paid commission at a fixed rate, and the agent claims a further remuneration on account of extra work, it will be for a jury to say whether, or not, in doing the extra work, the agent was merely performing a duty contemplated by the agreement ; and if they find that this was the case, he will not be entitled to make any additional charge (i).

By custom.

Where there is no special agreement, the auctioneer is entitled to a reasonable remuneration for his services, and, as a rule, it will be left to the jury to say whether the amount usually charged in the trade is reasonable or not (j). If the employer was aware of the customary charge, he will,

(e) 9 & 10 Vict., c. 95 (County Courts Act, 1846), s. 106; 19 & 20 Vict., c. 108 (County Courts Act, 1856), Schedule C.

(f) Scale of costs and fees made January, 1870, under 32 & 33 Vict., c. 71 (The Bankruptcy Act, 1869).

(g) *Post*, pp. 362—365.

(h) See Scale of Charges approved by the Committee of the Estate Exchange and other bodies, and also scale of charges taken from the printed circular of an eminent firm of auctioneers, *post*, pp. 361, 358.

(i) *Marshall v. Parsons*, 9 C. & P. 656.

(j) *Eicke v. Meyer*, 3 Camp. 412; *Cohen v. Paget*, 4 Camp. 96; *Levi v. Barnes*, Holt, 412; *Roberts v. Jackson*, 2 Stark. 225; *Chapman v. De Tastet*, *ib.* 295; *Stewart v. Kahle*, 3 Stark. 161; *Clark v. Smythies*, 2 F. & F. 83. In *Maitby v. Christie*, 1 Esp. 340 (decided in 1795), Lord Kenyon expressed an opinion that a charge of 7½ per cent. on the price realized, exclusive of all expenses of warehouse-room, catalogues, &c., could only be claimed by private agreement.

in general, be bound by it (*k*). Where a solicitor, without having made any previous arrangement as to the amount of remuneration, employed an auctioneer to sell some property for his client, and the auctioneer retained as commission a larger sum than would have been allowed under the bankruptcy scale, but not larger than the customary trade charge (*l*), Lord Romilly, M.R., held, reversing the decision of the taxing-master, who had merely allowed what was chargeable under the bankruptcy scale, that the whole charge ought to be allowed to the solicitor (*m*). In a subsequent case (*n*), however, the bankruptcy scale for an accountant and his clerks was adopted in taking accounts in chambers.

Where it is agreed that the auctioneer shall be paid a certain commission, if the property be sold by him or by his intervention, his right to such commission is not affected by the fact that his employer has sold the property himself, and without the direct intervention of the auctioneer, if the sale has been really brought about through the instrumentality of the latter (*o*). For instance, where A., employed to sell an estate for B., upon the terms of receiving £2 10s. *per cent.* commission on the amount realized, put up the estate at auction, but failed to obtain a purchaser, and C., who had attended the auction and first learned of the estate being for sale by seeing A.'s advertise-

Where sale not directly effected by auctioneer.

(*k*) Sugd. 45 ; cf. *Rainy v. Vernon*, 9 C. & P. 559.

(*l*) The charge included all expenses and was computed at £5 *per cent.* up to the first £500 of purchase-money, and £2 10s. *per cent.* on the remainder. This was said by several witnesses to be the usual charge ; some said up to £1,000, but most up to £2,000, in the absence of express stipulation. One said his charge was £5 *per cent.* up to £1,000, and £3 10s. *per cent.* up to £2,000. The case was decided in 1863.

(*m*) *Re Page*, 32 Beav. 487.

(*n*) *Meymott v. Meymott*, 33 Beav. 590.

(*o*) See *Wilkinson v. Martin*, 8 C. & P. 1.

ment, subsequently purchased it by private contract from B., it was held that A. could recover his commission (*p*). In another case, house agents, instructed to sell a house on the terms of receiving a commission of $2\frac{1}{2}$ *per cent.* on the premium, if they found a purchaser, but one guinea only, if the premises were sold "without their intervention," gave B. a card to view. B., thinking the price too high, did not then purchase, but, subsequently renewing the negotiation through a third party, ultimately became the purchaser at a lower price. This was held to be sufficient evidence to justify a jury in finding, as they did, that B. had purchased through the intervention of the house agents, and that the latter were entitled to their commission. (*q*)

Wilkinson
v. Alston.

The recent case of *Wilkinson v. Alston* (*r*) is especially instructive on this point. There the defendant, having ships for sale, employed the plaintiff to obtain purchasers, agreeing to pay a commission, if the plaintiff should be the means of introducing a purchaser. In February, 1876, plaintiff introduced a person who had been recommended to buy one of the defendant's ships by A., whom the plaintiff had employed to assist him in finding a purchaser, and the defendant agreed that, if this resulted in a sale, the plaintiff and A. should share the commission. No sale did result, and in March, 1876, A. mentioned the defendant's same vessel to B., who chanced to call upon him in reference to a ship of another owner. Plaintiff, hearing of this, informed the defendant of B.'s call and suggested his seeing B. on the subject. Defendant did nothing in the matter, and B. had

(*p*) *Green v. Bartlett*, 14 C. B. N. S. 681 ; 32 L. J. C. P. 261 ; 8 L. T. N. S. 503 ; 11 W. R. 637.

(*q*) *Mansell v. Clements*, L. R. 9 C. P. 139.

(*r*) 48 L. J. Q. B. 733, decided in 1879 ; see also *Bailey v. Chadwick*, 39 L. T. N. S. 429 ; W. N. 1878, 201.

at that time no intention of purchasing the defendant's ship, and made no communication about it to any one. Defendant then told plaintiff that it was no use doing anything until the ship returned home, and the plaintiff thenceforth took no steps to find a purchaser. A., however, in April, again reminded B. of the vessel, but B. took no notice of his reminder, and neither plaintiff nor defendant was aware of A.'s having written. In May B. wrote as broker directly to the defendant in reference to the vessel, and, after some negotiation, disclosed, on the 13th of June, the name of the principal for whom he was acting, and a sale was effected. Plaintiff, on hearing afterwards of the sale, claimed his commission, on the ground that the purchaser had been introduced through the medium of his original negotiations with A. The jury found, on questions left to them, first, that the plaintiff was authorized to find a buyer for the defendant's vessel; and, secondly, that B. was induced to enter upon the negotiation for the purchase by the information he had received from A.; and it was held (reversing the decision of Lush, J.) that the plaintiff was entitled to his commission.

Where there is a special contract between the auctioneer and his employer, the right of the former to his commission will depend upon the terms of the contract. If payment is conditional upon a contingency, the auctioneer cannot, in general (s), recover his commission, until the contingency has happened (t). Where W. performed work for a committee, under a resolution passed by them that any service rendered by him should be taken into consideration, and that such remuneration should be made as should be deemed

(s) See *infra*, p. 223.

(t) *Winter v. Mair*, 7 Taunt. 531; cf. *Roberts v. Jackson* 2 Stark. 225; *Caine v. Horsfall*, 1 Ex. 519.

right, it was held that it was for the committee to decide whether he should have anything, and, if anything, how much (*u*). Under an agreement to pay "2*l. per cent.* on the sum which may be obtained" (*x*), or a fixed commission, if a sale is effected within a stated time (*y*), the agent is not entitled to his commission, in the first case, until his principal has received the money, and, in the second case, unless he obtains a purchaser within the stipulated time. And where, upon a negotiation for an exchange of advowsons, £100 was to be paid as commission, "one-third down, the remaining two-thirds when the abstract of conveyance is drawn out," and one of the parties delivered an abstract of his title, but no abstract was delivered on the part of the other, and the negotiation dropped, it was held that the agent could not recover the two-thirds (*z*). Again, where auctioneers, employed to find a mortgagee of an estate, incurred expenses in advertising &c., and, they having entered into correspondence with N., it was agreed between them and their employers that, if N., in consequence of their letters, advanced the money required, they should have £100, and N. did advance the money, but not in consequence of their letters, they were held not entitled to recover the £100 (*a*). In an Irish case, a house agent was to be paid a commission, when the property he was employed to sell was disposed of to a person who had obtained information respecting it through the agent's office, or whose proposal had been accepted. The agent found a party who was willing to purchase upon the vendor's terms, but who subsequently declined to enter into

(*u*) *Taylor v. Brewer*, 1 M. & S. 290.

(*x*) *Bull v. Price*, 7 Bing, 237; 5 Moo. & P. 2.

(*y*) *Simpson v. Margitson*, 11 Q. B. 23; 17 L. J. Q. B. 81.

(*z*) *Alder v. Boyle*, 4 C. B. 635; 16 L. J. C. P. 232.

(*a*) *Green v. Mules*, 30 L. J. C. P. 343.

a contract, on the ground that the vendor had been guilty of misrepresentation. The Court held that the agent was not entitled to his commission, as there had been merely a treaty for a contract, which had been broken off (b).

But, although the auctioneer cannot recover his commission, so long as the special contract remains unperformed, still, he is, in most cases, entitled to a fair remuneration for his services, if he has done work under the contract, by which his principal has been benefited, or if the latter has wrongfully refused to perform his part of the contract, or rendered himself incapable of doing so (c). The amount recoverable will vary according to the special circumstances of each case. From the summing up of Denman, C.J., in the case of *Rainy v. Vernon* (d) it would appear that a vendor who, after employing an auctioneer to sell property, the latter to be paid an agreed commission on sale, sells the property himself, the auctioneer having incurred expenses with regard to advertisements &c., will be liable to pay the full commission, just as if the auctioneer had sold the property, if the jury find that there is a notorious custom to that effect. The custom must, however, be so notorious that every one in the trade, and the vendor himself, must be taken to have known it (e). In general, the amount of remuneration will be in proportion to the services rendered. Where a company employed a broker to sell their shares on the terms that he should be paid £100 down

(b) *Cannon v. Kelly*, Hay. & J. 655.

(c) *Bull v. Price*, 7 Bing. 237, 241; 5 Moo. & P. 2, 8; *Horford v. Wilson*, 1 Taunt. 12; *Lara v. Hill*, 15 C. B. N. S. 45; see notes to *Cutter v. Powell*, 2 Sm. L. C. 1.

(d) 9 C. & P. 559; see also *Driver v. Cholmondeley*, *ibid.* note; cf. *Stewart v. Kahle*, 3 Stark. 161. It appears, however, from the report of *Rainy v. Vernon*, that the purchaser had first heard of the property being for sale by seeing the auctioneer's advertisement.

(e) *Wood v. Wood*, 1 C. & P. 59.

and £400 in addition upon allotment of the shares, and he disposed of a considerable number of the shares, when the company was wound up, the Court, having power to draw inferences of fact, held that he was prevented from earning the £400 by the act of the company, and that he was therefore entitled to recover a proportion of the £400 (*f*). In a more recent case (*g*) half of the agreed commission was allowed to a broker who had had the business taken out of his hands before completion, there being a mercantile custom to that effect. If the auctioneer has actually found a purchaser at the required price, but the vendor refuses or is unable to sell, there seems to be no reason why the auctioneer should not receive his full commission (*h*).

But if the principal has agreed to pay the auctioneer a certain commission "on sale" and, before the auctioneer has found a purchaser, sells the property without the intervention of the auctioneer, the latter will not, in the absence of special circumstances, be entitled to recover anything, if it appears from the contract that nothing was to be paid unless he effected a sale (*i*). The auctioneer could, however, recover, if the act of his principal had been wrongful (*k*).

Employment of more than one agent.

If two or more estate agents are employed to sell property, and one finds, and another concludes, the bargain with a purchaser, and according to the usage the commission is payable to the agent who finds the purchaser, the jury is not bound to give that agent the full amount of the com-

(*f*) *Inchbald v. The Western Neilgherry Coffee, &c., Co.*, 17 C. B. N. S. 733; 34 L. J. C. P. 15. The Court assessed the damages at £250.

(*g*) *Queen of Spain v. Parr*, 39 L. J. Ch. 73.

(*h*) See *Per Willes, J.*, in *Prickett v. Badger*, 1 C. B. N. S. 296; 26 L. J. C. P. 33; 3 Jur. N. S. 66; *Clark v. Smythies*, 2 F. & F. 83.

(*i*) *Simpson v. Lamb*, 17 C. B. 603; 25 L. J. C. P. 113.

(*k*) *Ibid.*

mission (*l*). If a purchaser be obtained by means of one of the agents only, the successful agent is alone entitled to commission, unless the other has incurred expense in carrying out his instructions, or is entitled to commission by custom or usage (*m*).

Notwithstanding his general right to remuneration, the auctioneer cannot claim any commission, if he is himself the executor (*n*), trustee (*o*), or mortgagee with a power of sale (*p*), of the property he sells, unless it appears from the trust instrument or mortgage deed that he is to be entitled to charge a commission (*q*); or if he purchases the property for himself, or sells it to a firm of which he is a partner, or to a company in which he is a shareholder (*r*). Nor is he entitled to any commission, if the transaction upon which he was employed was illegal (*s*); or if, in consequence of his negligence or unskilfulness, the sale is defeated (*t*). In the latter case, indeed, he may render himself liable in

(*l*) *Murray v. Currie*, 7 C. & P. 584.

(*m*) Add. Con. 711.

(*n*) *Hovey v. Blakeman*, 4 Ves. 596.

(*o*) *Kirkman v. Booth*, 11 Beav. 273. And by G. R. 119, 32 & 33 Vict. c. 71 (Bankruptcy Act, 1869), where the trustee in a bankruptcy is an auctioneer, he may not by himself, or any partner, act as such in the sale of any property vested in him, except with the consent of the committee of inspection and upon such terms as they may think fit.

(*p*) *Mathison v. Clarke*, 3 Drew. 3; 24 L. J. Ch. 202.

(*q*) *Douglas v. Archbutt*, 2 De G. & J. 148; or, it seems, unless it appears that the object of the auctioneer in entering into the transaction was to earn a commission; *Miller v. Beal*, W. N., 1879, 36; 27 W. R. 403.

(*r*) *Salomons v. Pender*, 3 H. & C. 639; 34 L. J. Ex. 95; 11 Jur. N. S. 432; 12 L. T. N. S. 267; 13 W. R. 637; cf. *ante*, p. 125.

(*s*) *Holland v. Hall*, 1 B. & Ald. 53; *Josephs v. Pebrer*, 3 B. & C. 639; *Lawton v. Hickman*, 9 Q. B. 563.

(*t*) *Denev v. Daverell*, 3 Camp. 451, where the sale went off through the auctioneer having neglected to insert an ordinary condition; *Jones v. Nanney*, M'Cle. 25; 13 Price, 76; *Hamond v. Holiday*, 1 C. & P. 384; *White v. Chapman*, 1 Stark. 113; *Hurst v. Holding*, 3 Taunt. 32.

damages to his employer (*u*), though merely nominal damages will be given, if the latter has sustained no actual loss (*x*), and, in general, the auctioneer will not be liable if he has acted *bonâ fide* and on the best advice he was able to obtain (*y*). An auctioneer cannot recover from his employer any extra costs which he may have incurred through his own negligence or ignorance of the law (*z*), or money which he may have had to pay in consequence of his own fraud, even though his employer participated in the fraud (*a*).

Auc-
tioneer's
lien.

When the transaction has been regular on the part of the auctioneer, he has a lien for his commission and expenses upon goods entrusted to him for sale, so long as they are in his possession, though not necessarily on his premises; and he is entitled to refuse delivery of them to the purchaser, if sold, or to the vendor, if unsold, until his claim has been satisfied (*b*). And if the deposit or purchase-money has been paid to the auctioneer, he has a lien upon it similar to that which he has upon the goods (*c*). He has not, however,

(*u*) *Parker v. Farebrother*, 1 C. L. R. 323, where the vendor recovered from the auctioneer the amount which he had been obliged to allow the purchaser in consequence of the auctioneer having negligently misdescribed the property; *Peirce v. Corf*, L. R. 9 Q. B. 210; 43 L. J. Q. B. 52, where the auctioneer neglected to make a binding contract; cf. *Kavanagh v. Cuthbert*, I. R. 9 C. L. 136.

(*x*) *Hibbert v. Bayley*, 2 F. & F. 48.

(*y*) *Miles v. Bernard*, Peake, Add. Cas. 61.

(*z*) *Capp v. Topham*, 6 East, 392; 2 Smith, 443, where an auctioneer rendered himself liable to pay the auction duty through his own blunder, his principal being equally in error; cf. *Christie v. Attorney-General*, 6 Bro. P. C. 520.

(*a*) *Merryweather v. Nixon*, 8 T. R. 186; 2 Sm. L. C. 527; *Adamson v. Jarvis*, 4 Bing. 66, 72.

(*b*) *Williams v. Millington*, 1 H. Bl. 81, 85; approved in *Woolfe v. Horne*, 2 Q. B. D. 355; 46 L. J. Q. B. 534; 36 L. T. N. S. 705; 25 W. R. 728; *Lane v. Tewson*, 12 A. & E. 116, n.; 1 G. & D. 584.

(*c*) *Drinkwater v. Goodwin*, 1 Cowp. 251; *Hammonds v. Barclay*, 2 East, 227.

a lien for expenses he may have incurred in removing goods contrary to the express directions of the owner (*d*), or in respect of dissimilar and collateral transactions (*e*), or of claims against third parties. Where A. sent goods to B. for sale, who deposited them with C., an auctioneer, and A. subsequently demanded the goods from C., who refused to deliver them until a claim which he had against B. was satisfied, it was held that he was not justified in so detaining them, and that, by claiming the amount owing to him from B., he had waived the lien, which he otherwise would have had, for warehouse-rent (*f*).

If an auctioneer becomes bankrupt, the right to sue for any commission due to him at the time of the bankruptcy, or prior to the time at which he obtains his discharge, vests in his trustee in bankruptcy (*g*). Bankruptcy of auctioneer.

If the auctioneer, in the proper performance of his duty to his principal, does an act injurious to the rights of a third party, such as selling goods to which the principal has no title (*h*), a contract to indemnify the auctioneer against the consequences of such act will be presumed against the principal, provided that the act done was not illegal and tortious to the knowledge of the auctioneer (*i*). Auctioneer's right to indemnity from his principal;

And it would appear that, if an auctioneer, on receipt of a notice that the goods which he is about to sell do not belong to his principal, acts *bonâ fide* in accordance with the terms from a third party.

(*d*) *Grimshaw v. Atterwell*, 8 C. & P. 6.

(*e*) *Houghton v. Matthews*, 3 B. & P. 485; cf. *Scarfe v. Morgan*, 4 M. & W. 270.

(*f*) *Dirks v. Richards*, 5 Sco. N. B. 534.

(*g*) *Emden v. Carte*, 17 Ch. D. 169; aff. *ib.* 768.

(*h*) *Adamson v. Jarvis*, 4 Bing. 66.

(*i*) *Dugdale v. Lovering*, L. R. 10 C. P. 196, and cases there cited; *Attorney-General v. Ray*, L. R. 9 Ch. 397, 405.

of the notice, he will be entitled to recover from the party giving such notice any damages which he may have been obliged to pay to his principal in consequence of having so acted (*k*).

(*k*) *Ibid.*

CHAPTER XIII.

THE AUCTIONEER'S RESPONSIBILITY FOR THE PROPERTY AND FOR THE SALE PROCEEDS.

It is the duty of an auctioneer to take the same care of property entrusted to him for sale as he would of his own (*a*). He is liable for any loss of it or damage to it that may happen through his default or negligence (*b*); but he is not liable for any loss or damage caused by robbery, fire or other accident, without default or negligence on his part (*c*). When he has undertaken to insure goods which he is employed to sell, he must give notice to his principal, if from any cause he is unable to effect an insurance; otherwise he will be liable for any loss that may occur through the goods not being insured (*d*).

So long as the property remains unsold, the owner can

(*a*) *Maltby v. Christie*, 1 Esp. 340; *Massey v. Banner*, 1 J. & W. 241. That is, as a prudent man would of his own.

(*b*) Nor can he be heard to say that perhaps the property would not have escaped, even if he had acted with due diligence; *Davis v. Garrett*, 6 Bing. 716, 724.

(*c*) *Vere v. Smith*, Vent. 121; *Maltby v. Christie*, 1 Esp. 340; notes to *Coggs v. Bernard*, 1 Sm. L. C. 188; Sm. Merc. Law, 113; or for any damage or loss incurred by him, without default or negligence, while he is engaged in the prudent exercise of his discretion and in pursuance of the regular and accustomed course of business; *Russell v. Hankey*, 6 T. R. 12; *Knight v. Lord Plymouth*, 3 Atk. 480; *Belchier v. Parsons*, Amb. 219; *Warwicke v. Noakes*, Peake, 68.

(*d*) *Callander v. Oelrichs*, 5 Bing. N. C. 58.

Owner's
right to
recover the
property
from
auctioneer.

recover it from the auctioneer by action (e); and should the auctioneer wrongfully and unwarrantably dispose of it or part with it, the owner can maintain an action against him for the conversion (f). Where A. sent three horses to B., an auctioneer, to be sold next day, and, upon being told by B.'s clerk that the next day would not be so good as the following sale-day, said that he would send for them back again, which he did the next evening, but the horses had then been sold, it was held that B. was liable to A. for a conversion of the horses (g). The principal may, however, waive his right of action by subsequently approving of the auctioneer's conduct (h).

Auc-
tioneer's
duty to
account
for sale
proceeds.

When the auctioneer receives the purchase-money as agent for the vendor, it is his duty to immediately account for it, and pay over the balance due, to the latter (i). He is not, however, in general, liable to pay interest upon money which has come to his hands on his principal's behalf, unless there has been fraud or misconduct on his part, such as improperly withholding accounts and refusing to pay over the money, when demanded (k). It is imperative upon an agent to preserve correct accounts of all his dealings and transactions; and the loss, and still more the destruction, of his accounts by the

(e) See 6 Geo. IV. c. 94, s. 6; *Topham v. Braddick*, 1 Taunt. 572. As to the owner's right to follow the proceeds of sale, see *Taylor v. Plumer*, 3 M. & S. 562; *Scott v. Surman*, Willes, 400; *Whitecomb v. Jacob*, 1 Salk. 160; *Ryall v. Rolle*, 1 Atk. 165.

(f) As to *jus tertii* and want of title in the principal, see *ante*, Chapter II.

(g) *Powell v. Sadler*, Paley, P. & A. 80.

(h) *Earl of Ferrers v. Robins*, 2 C. M. & R. 152; 1 Gale, 70; 5 Tyr. 705.

(i) *Crosskey v. Mills*, 1 C. M. & R. 298; *Gray v. Haig*, 20 Beav. 219, 239; Smith, Merc. Law, 110. As to the deposit, see *ante*, Chapter IX.

(k) *Turner v. Burkinshaw*, L. R. 2 Ch. 488; ——— v. *Jolland*, 8 Ves. 72; Sm. Merc. Law, 111; or applying the money to his own use; *Rogers v. Boehm*, 2 Esp. 701.

agent falls most heavily upon himself (*l*). If the agent refuses an account, the principal may bring an action against him for not accounting, and obtain discovery of his books and papers (*m*). If the items of the agency account can be proved, the principal can sue for the balance due to him as money had and received (*n*).

If the agent places the principal's money to his own account at his banker's, without any mark distinguishing it from his own, he will be answerable for it, if the banker fails: if it were otherwise, he might treat it as his own, if the banker's solvency continued, and as his principal's, if the banker failed (*o*).

The agent of an agent, as, an auctioneer's clerk, is not Sub-
accountable to the principal, but only to his master (*p*). agents.

An auctioneer may none the less safely pay over the Insolvency
proceeds of sale to his principal, because he knows that the of prin-
ciple.
latter is in embarrassed circumstances (*q*).

The auctioneer is not, in general, responsible to his Auc-
tioneer's

(*l*) *Gray v. Haig*, 20 Beav. 219, 239.

(*m*) Sm. Merc. Law, 112; Jud. Act, 1875, O. XXXI. A London broker cannot protect himself against affording discovery on the ground that such discovery will subject him to a forfeiture of the penalty of his bond to the corporation of London; *Green v. Weaver*, 1 Sim. 404. An action will not lie against the agent for not accounting, until after demand of an account; *Topham v. Braddick*, 1 Taunt. 571. After the lapse of a reasonable time, a jury may presume that a demand has been made, and the agent has accounted; *ibid*.

(*n*) *Tomkins v. Willshear*, 5 Taunt. 431; 1 Marsh. 115.

(*o*) Sm. Merc. Law, 112; *Wren v. Kirton*, 11 Ves. 377; *Massey v. Banner*, 1 J. & W. 241; 4 Madd. 413; *Fletcher v. Walker*, 3 Madd. 73; *Darke v. Martyn*, 1 Beav. 525.

(*p*) *Cartwright v. Hatley*, 1 Ves. 292; *Stephens v. Badcock*, 3 B. & Ad. 354; unless he has been guilty of a breach of trust; for "all parties to a breach of trust are equally liable; there is between them no primary liability"—*per Leach, M. R.*, in *Wilson v. Moore*, 1 Myl. & K. 126, 146; *aff. ib.* 337.

(*q*) Always assuming that the transaction is not fraudulent; *White v. Bartlett*, 9 Bing. 378; Sugd. 53; Dart, 180.

personal
liability
for sale
proceeds.

employer for the purchase-money of the property sold, unless he has received it (*r*) ; but there are cases in which he may render himself liable for the purchase-money, although it has not been paid by the purchaser ; as, where he has, without express authority, sold goods upon credit (*s*) ; or where he allows the contract to be rescinded, without his principal's consent. Where an auctioneer, having sold some horses which had been sent to him for that purpose, subsequently allowed the purchaser of one of the horses to rescind the contract on the ground that the horse did not answer the description given of him, it was held that, since the auctioneer had deviated from the usual course of his duty in taking upon himself to rescind the contract, it was incumbent upon him to show his warranty for doing so, and that, as he did not give such proof, his employer was entitled to recover from him the amount at which the horse had been sold (*t*). If an auctioneer, giving credit to the purchaser, pays the amount of the purchase-money, after deducting his charges, to his principal, with notice of an arrangement made between his principal and the purchaser, that the amount bid should be set off against an existing debt due from the former to the latter, he cannot recover the amount so paid by him from the purchaser (*u*). If a purchaser pays his money to an agent, when the latter is not authorized to receive it, he makes that agent his own for the purpose of

(*r*) In cases where payment to the agent is payment to the principal, if the agent admits that he has received money, as, by giving credit in account with the debtor, he is precluded from saying, against his principal, that he has not received it ; *Andrew v. Robinson*, 3 Camp. 199.

(*s*) *Williams v. Millington*, 1 H. Bl. 81 ; *Earl of Ferrers v. Robins*, 2 C. M. & B. 152 ; 1 Gale, 70 ; 5 Tyr. 705 ; see also *ante*, p. 28, note (*n*).

(*t*) *Nelson v. Aldridge*, 2 Stark. 435.

(*u*) *Grice v. Kenrick*, L. R. 5 Q. B. 340.

paying the money over (*x*); but if, in such a case, the agent has actually paid over the money, he is not liable to an action by the person who mispaid him (*y*). If the seller, for valuable consideration, direct the auctioneer to pay over the proceeds of the sale to a third person, he cannot revoke such direction without the consent of the third person (*z*).

The auctioneer is not liable to his principal for the purchase-money in all cases where it has been paid to him. For instance, proof of money received upon a condition will not support a claim for money had and received. Thus, a horse was sold at a repository, with a warranty that it was quiet in harness, under the following, among other, conditions: (1) that "should any horse be warranted and prove unsound, he must be returned within the second day after the sale, before five o'clock, with a certificate from a veterinary surgeon particularly describing the unsoundness, when, if confirmed by the veterinary surgeon of the establishment, the amount received for the horse shall be immediately paid back, but if he should not confirm the certificate, another veterinary surgeon shall be called in, and his decision shall be final;" (2) that "if a horse warranted quiet in harness or quiet to ride or in any other respect (except as to soundness) shall be returned within the prescribed period as not answering the warranty given with him at the time of sale, he shall be tried and examined by an impartial person, whose decision shall be final;" and (3) that the purchase-money for any horse sold at the repository was not to be

Auctioneer
not always
liable for
purchase-
money
paid to
him.

(*x*) *Parnter v. Gaitskell*, 13 East, 432.

(*y*) *Per* Lord Mansfield, C. J. in *Buller v. Harrison*, 2 Cowp. 565. But if the mistake was corrected before he paid it over, he will be liable; *ibid.*

(*z*) *Metcalfe v. Clough*, 2 Man. & R. 178; Sugd. 50; *Rodick v. Gandell*, 12 Beav. 325; 1 De G. M. & G. 763; *Yates v. Hoppe*, 9 C. B. 541.

paid over to the vendor till four days after the sale. The horse was paid for and taken away by the purchaser, but afterwards returned on the ground that it did not answer the warranty; whereupon the auctioneer handed back the price. It was held that the sum received by the auctioneer was not money had and received to the use of his principal (a). In another case the plaintiff sold a horse for the defendant and received the price. The purchaser afterwards rescinded the contract on the ground of fraud and was repaid the purchase-money. In an action for the keep of the horse it was held that the defendant could not set off the price as money received to his use, it having ceased to be so when the contract was defeated by the purchaser, although the defendant was ignorant of the fraud (b).

(a) *Hardingham v. Allen*, 5 C. B. 793; 17 L. J. C. P. 198; 12 Jur. 584.

(b) *Murray v. Mann*, 2 Ex. 538; cf. *Stevens v. Legh*, 2 C. L. R. 251.

CHAPTER XIV.

SPECIAL KINDS OF SALES BY AUCTION.

I. *Sales by the Chancery Division of the High Court of Justice.*

WHEN a sale of land or houses has been ordered by the Chancery Division (a), it is usually, though not invariably, effected by a sale by public auction (b). A sale by auction by the Court naturally differs in some respects from an ordinary sale by auction.

The conduct of the sale is given, as a general rule, to the plaintiff or other party having the carriage of the proceedings; but, if it appears to be for the benefit of the estate that he should not have the conduct of the sale, the conduct may be given to any other party: the right to the conduct of the sale does not depend upon the extent of the interest of parties (c). Where all the parties have leave

(a) As to the jurisdiction of the Court to sell and its exercise, see Jud. Act, 1873, s. 34; Dart, 1171-1194.

(b) Cf. *ante*, p. 10, note (n).

(c) *Domville v. Berrington*, 2 Y. & C. Ex. 723; *Alven v. Bond*, F. & K. 196, 212; *Dixon v. Pyner*, 7 Hare, 331; *Ex parte M'Gregor*, 4 De G. & S. 603; *Dale v. Hamilton*, 10 Hare, App. VII.; *Knott v. Cottee*, 27 Beav. 33; *Cobden v. Maynard*, 1 N. R. 354; *Hewitt v. Nanson*, 28 L. J. Ch. 49; 7 W. R. 5; Dan. Ch. Pr. 1153; nor upon the possession of the title-deeds, since every party is bound to facilitate the sale; *Knott v. Cottee*, *ubi supra*.

to bid, a solicitor not concerned for any of them will be appointed to conduct the sale (*d*). The solicitor in charge of the sale is considered, as between vendor and purchaser, to be the agent of all the parties (*e*).

Leave to
bid.

The order for sale sometimes provides that the parties shall be at liberty to bid ; if it does not, a party wishing to bid may take out a summons for the purpose at the chambers of the judge to whose court the action or matter is attached (*f*). A party will not be suffered to bid without having previously obtained leave ; although the sale will not necessarily be set aside because a party bid without leave and became the purchaser (*g*). The principles upon which the Court grants or refuses leave to the parties to bid appear from the judgment in *Tennant v. Trenchard* (*h*). There a motion of the plaintiff, a trustee, for leave to bid,

Tennant v.
Trenchard.

was opposed by some of the beneficiaries, and Lord Hatherley, L.C., in refusing the motion, on appeal, with costs, observed : "The cases where liberty to bid has been refused are mostly cases of solicitors, the reason of the rule being that a solicitor must have acquired much information, and that the Court could feel no security that he would do his duty and communicate this information, so as to raise the price, if he had a prospect of becoming the purchaser. But the reason of the rule applies to trustees as strongly as to solicitors ; and though the plaintiff has really suffered great hardship

(*d*) Dan. Ch. Pr. 1153.

(*e*) *Dalby v. Pullen*, 1 Russ. & M. 296.

(*f*) Upon notice to the other parties. *Hooper v. Goodwin*, Coop. G. 95 ; *Williams v. Attenborough*, Turn. & R. 70, 76 ; Seton, 1396 ; Dan. Ch. Pr. 1160. The Partition Act, 1868 (31 & 32 Vict. c. 40), expressly provides that the Court may allow any of the parties interested in the property to bid at a sale under the act ; see s. 6 of the act.

(*g*) *Elworthy v. Billing*, 10 Sim. 98 ; *Wilson v. Greenwood*, *ib.* 101, n.

(*h*) L. R. 4 Ch. 537 ; 38 L. J. Ch. 661.

in this case, he must be considered to have considerable knowledge of the estate, which is of a very peculiar character, part of it consisting of a canal and of the business of the canal. It has been said that his bidding will be an advantage to the sale, as, the more bidders there are, the better chance there will be of a good sale ; but, on the other hand, the knowledge that the trustee was a bidder might keep others away, as they might consider that he would bid to the utmost value of the property, and then, if any one else bid more, would leave it. The rule is that, if those who are interested in the estate insist that a trustee ought not to be allowed to bid, the Court will certainly give so much weight to their wishes as to say that, until all other ways of selling have failed, he shall not be allowed to buy. But if the Court is satisfied that no purchaser at an adequate price can be found, then it is not impossible that the plaintiff may be allowed to make proposals and to become the purchaser (i).” In general, leave to bid will not be given to the person who has the conduct of the sale (j), and the solicitor to a party will not have leave to bid, if his client would not ; but a solicitor will not be disqualified from purchasing by the mere fact of his name appearing upon the particulars of sale as that of a person from whom copies of the particulars can be obtained (k).

It is the duty of the solicitor having charge of the sale to prepare and bring into chambers the particulars of sale, the abstract of title and the formal conditions of sale. The

The particulars, abstract of title, and conditions.

(i) L. R. 4 Ch. 547 ; cf. *Campbell v. Walker*, 5 Ves. 678, 682 ; *Dean v. Farmer*, 32 Beav. 327 ; and *Geldard v. Randall*, 9 Jur. 1085, where leave to bid was refused an administrator ; see also *Dart*, 1195.

(j) *Sidney v. Ranger*, 12 Sim. 118.

(k) *Guest v. Smythe*, L. R. 5 Ch. 551 ; 39 L. J. Ch. 536. As to the course to be pursued with a view to having a party certified the purchaser who has bid without leave and been declared the purchaser, see *Dan. Ch. Pr.* 1160.

particulars, which may be prepared, if necessary, with the assistance of the intended auctioneer or some other competent person (*l*), differ from those used on ordinary sales only in that they are intituled in the action or matter and state that the sale is made with the approbation of the judge and pursuant to a judgment or order (*m*). The abstract of title must by statute be laid before one of the conveyancing counsel of the Court, unless the Court dispense with this being done (*n*). With the abstract of title the formal conditions of sale (*o*) are sent to the counsel, who adds any special conditions that he may consider proper in the particular case (*p*).

Appoint-
ment at
Chambers.

An appointment is afterwards obtained at chambers, at which, among other matters, the time and place of sale are determined; the auctioneer is appointed, and his remuneration fixed; the advertisement of the sale, prepared by the solicitor, is signed and issued by the judge's chief clerk; when deemed necessary, a survey and valuation are ordered, with a view to fixing the reserved bidding; if there is to be a deposit, the person to receive it is appointed; and the particulars and conditions of sale are settled for printing (*q*).

The place
of sale.

The sale will be directed to be held in whichever appears more advantageous, London or the country (*r*). As a rule, an affidavit by the intended auctioneer or some other competent person, as to the advisability of the proposed place and

(*l*) Dan. Ch. Pr. 1154.

(*m*) See forms of particulars, *post*, p. 294, No. 2.

(*n*) 15 & 16 Vict. c. 86, s. 56; *Gibson v. Wollard*, 5 De G. M. & G. 835; cf. *In re Jones's Settled Estates*, 1 Jur. N. S. 817.

(*o*) See precedent IV., *post*, p. 315.

(*p*) Dan. Ch. Pr. 1155-6.

(*q*) *Ib.* 1156-7. As to the reserved bidding, see *ante*, pp. 91, 140; Ord. 16 July, 1851, r. 2; Cons. Ord. XXXV., r. 61.

(*r*) Ord. 16 July, 1851, r. 1; Cons. Ord. XXXV., r. 61.

time of sale, and also of the proposed mode of lotting, is required (s).

Any one may be appointed to act as the auctioneer ; and a person appointed to sell by auction under an order of the Court may do so without being licensed as an auctioneer (t). The auctioneer.

All or one or more of the members of a firm may be appointed (u). Where the competency of the intended auctioneer is not known at chambers, an affidavit of his fitness will be required (v). No definite rule can be laid down as to what the auctioneer's remuneration will be. It varies according to the magnitude of the property, the trouble and expense of preparing for the sale, and the position of the auctioneer ; sometimes it consists of a commission on each lot sold, with a fixed sum for each lot unsold, sometimes of a fixed sum for the entire sale, or for each lot sold or bought in (w). His remuneration.

The advertisement may be directed to be inserted in a variety of papers, and to be repeated a number of times (x). It is usually only ordered to be inserted once in the Gazette (y). Only one advertisement will be issued, unless for some special reason it be thought necessary to issue a second, or further advertisements (z). Publicity is also given to the sale by means of posting bills, prepared under the direction of the solicitor or auctioneer (a). The advertisement.
Posting bills.

The valuation, where there is to be one, is generally

Valuation.

(s) Dan. Ch. Pr. 1157 ; and see form, *post*, p. 365. For the purpose of lotting a preliminary survey will have been made.

(t) See *ante*, p. 10.

(u) Dan. Ch. Pr. 1157, note (p).

(v) *Ib.* 1157. (See form, *post*, p. 366.)

(w) *Ibid.*

(x) Cons. Ord. XXXV. r. 35.

(y) As to stamp on advertisement, see Dan. 1157, note (s).

(z) Cons. Ord. XXXV. r. 35.

(a) Dan. Ch. Pr. 1159. And, of course, by distribution of the particulars or catalogue.

directed to be made by the auctioneer, whose opinion is at the same time required as to the price which the property ought to fetch. The valuation and opinion are verified by an affidavit, which should state the respective amounts by reference to an exhibit only, so that the amounts may not be disclosed by the affidavit when filed (*b*). The reserved bidding is fixed at a subsequent appointment at chambers, at which it will be necessary to produce the exhibit and an office copy of the affidavit.

Security to
account for
deposit :

The person appointed to receive the deposit, usually the auctioneer, has, as a rule, to give security duly to account for and pay what he may receive in respect of the deposit (*c*). This he does, at his choice, either by entering into a recognizance, with one or more sureties, in double the amount of the probable deposit-money, or by paying into court to a separate account such sum, usually double the amount of the probable deposit-money, as the judge may approve (*d*). If he elects to give a recognizance, the draft recognizance is prepared by the solicitor (*e*), and, on being approved at chambers, is engrossed on parchment and acknowledged by the cognizors before some person authorized to administer oaths in Chancery. The sureties must also make an affidavit that they are severally worth the sum for which they are bound by the recognizance (*f*). An office copy of the affidavit is produced to the chief clerk, who signs a memorandum of allowance in the margin of the recognizance, which is then sent from chambers to the Enrolment Office and enrolled. If, on the other hand, the

a. by
recogniz-
ance ;

b. by pay-
ment into
court.

(*b*) Reg. 8 Aug. 1857, r. 13 ; Dan. Ch. Pr. 1158. For form, see *post*, p. 366.

(*c*) Ord. 16 July, 1851, r. 3 ; Cons. Ord. XXXV. r. 61.

(*d*) Dan. Ch. Pr. 1158.

(*e*) See Dan. Forms, No. 1117.

(*f*) *Ib.* No. 1118.

person appointed to receive the deposit prefers to give security by paying a sum of money into court, the solicitor takes out a summons for leave to make the payment, an order is drawn up by the registrar, and the money is paid into court in the ordinary way. If desired, directions for the investment of the money will be embodied in the order (*g*).

The expense connected with the giving of security is so considerable that security is not often required on sales of small properties, or where the parties are all *sui juris* and agree to waive it (*h*); and, to save the expense of enrolling and vacating the enrolment (*i*) of a recognizance, it is the practice at some of the chambers to defer sending the recognizance to the Enrolment Office till the time fixed for the payment of the deposit into court has expired, when, if such payment be duly made, the enrolment becomes, of course, unnecessary (*j*).

Some time before the sale, a print of the particulars and conditions, signed by the chief clerk, a note, signed by him, of the reserved bidding, if any, under a sealed cover, forms of a bidding paper, and of an affidavit of the result of the sale, and also printed directions, as to keeping the reserved bidding secret, as to the mode of conducting the sale, and as to returning the particulars, conditions and affidavit of the result, are forwarded to the auctioneer by the chief clerk, either directly or through the solicitor (*k*).

Security sometimes not required.

Communication from Chief Clerk to auctioneer.

Secrecy as to reserved bidding.

(*g*) Dan. Ch. Pr. 1159.

(*h*) Seton, 1397.

(*i*) See *infra*, p. 247.

(*j*) Dan. Ch. Pr. 1159, note (*i*).

(*k*) *Ib.* 1160. For forms of directions to the auctioneer as to the conduct of the sale, and of bidding paper and affidavit of the result, see Dan. Forms, Nos. 1120 *et seq.*; and *post*, pp. 367-370.

open the note of the reserved bidding until the time of sale, and not to divulge the reserved bidding to any one, either at or at any time after the sale. Where, however, after an ineffectual attempt to sell the property by auction, the reserved bidding was divulged by the auctioneer's clerk, contrary to the express instructions given to his master, Lord Romilly, M.R., held a purchaser at the reserved price to his bargain and, in giving judgment, said: "It is very usual that the reserved bidding is known, and it is the constant practice for persons to take it (the property) at the reserved bidding (*l*)."

Proceed-
ings at the
sale.

The sale, at which the solicitor should be present (*m*), must be conducted in strict accordance with the chief clerk's directions (*n*). The auctioneer must be careful to make the proper entries in the bidding paper himself, and to see that it is duly signed by the purchaser (*o*). It has been said, indeed, that the Statute of Frauds does not extend to sales by the Court (*p*); but in practice the purchaser is always required to sign the bidding paper. Where there is a reserved bidding, if no one bids so much as the reserve, the auctioneer must declare that the property is not sold, but has been bought in on account of the persons interested in or entitled to the property (*q*). The Court does not bind

(*l*) *Else v. Barnard*, 28 Beav. 228; cf. *Bousfield v. Hodges*, 33 Beav. 90; *Doule v. Lucy*, 4 Hare, 311. The chief clerk may use his discretion as to communicating the reserved bidding to the parties, or any of them, or their solicitors; Ord. 16 July, 1851, r. 2; Cons. Ord. XXXV. r. 61. Cf. *ante*, p. 141.

(*m*) Dan. Ch. Pr. 1161.

(*n*) A sale in a manner different from that directed by the judgment of the Court, unperfected by conveyance, will be treated as a nullity; *Annesley v. Ashurst*, 3 P. Wms. 282; *Ex parte Hughes*, 6 Ves. 617; *Boxen v. Evans*, 1 J. & L. 178, 266; Dart, 1196.

(*o*) See form of bidding paper, *post*, p. 368.

(*p*) *Att.-Gen. v. Day*, 1 Ves. 218; *Lord v. Lord*, 1 Sim. 503.

(*q*) Ord. 16 July, 1851, r. 2.

itself by a condition to accept the highest bidding (*r*); but, in the absence of special circumstances, the best bidder is, of course, declared the purchaser (*s*). In a case where the offer of the highest bidder was rejected, in the belief that he was of insufficient means, and the next bidder was declared the purchaser, the Court did not treat the sale as void, but seems to have considered that the highest bidder should have moved that he, instead of the other, might be declared the purchaser (*t*).

Although, by the 8th section of the Sale of Land by Puffers. Auction Act, 1867 (*u*), nothing in that act contained is to affect "any sale of land made under or by virtue of any order of the High Court of Chancery," it can hardly be doubted that the employment of a puffer (*v*) would not now be permitted upon a sale by the Court any more than upon any other sale. It was said in a modern case (*w*) that "the Court ought not to be less strict as to sales under its own order than as to sales out of Court"; and in a more recent case (*x*) the 5th section of the act (*y*) was directly applied to a sale by the Court, and, the conditions stating that the sale was subject to a reserved bidding, that was held to preclude the vendor from employing a person to bid up to the reserve, he not having expressly stipulated for the right to do so. It had long before been decided that if a person without authority interfered and bid at the sale, though only to prevent a sale at an undervalue, the Court would

(*r*) *In re Costello's*, 2 J. & L. 244.

(*s*) 1 Dav. 595.

(*t*) *Hughes v. Lipscombe*, 6 Hare, 142; Dart, 1199.

(*u*) See the various provisions of the act set out *ante*, pp. 136, 137.

(*v*) For a definition of "puffer," see *ante*, p. 131.

(*w*) *Dimmock v. Hallett* (1866); see *ante*, p. 140.

(*x*) *Gilliat v. Gilliat* (1869); see *ante*, p. 138.

(*y*) See *ante*, p. 136.

hold him to his purchase (z). It may be observed also that by the rules of the Court the reserved bidding, where there is one, must be made one of the conditions of sale under which the property is sold (a); and that, in his affidavit of the result, the auctioneer has to depose to having conducted the sale in a fair, open and candid manner (b).

Bidding
by incom-
petent per-
son (c).

In a case where it was discovered that the person who had been declared the highest bidder was insane at the time of bidding the Court refused to let the next bidder stand as purchaser, although all the parties consented; but ordered a resale (d). It has been suggested that the Court might have treated the second best bid as an offer to purchase by private contract (e).

Affidavit of
the result
of the sale.

The ordinary conditions of sale fix a time at which the chief clerk will certify the result of the sale. To enable the chief clerk to do this, the auctioneer has, after the sale, to make an affidavit of the result (f); and of this affidavit an office copy, with, as exhibits, the bidding paper and particulars and conditions forwarded to the auctioneer by the chief clerk, must be left at chambers at least a clear day before the day appointed for the result to be certified (g).

The Chief
Clerk's cer-
tificate.

A certificate of the result is, upon the day appointed, settled and signed by the chief clerk, and, at the expiration of four clear days, adopted and signed by the judge, and filed, unless an application to discharge or vary it is made in the interval (h).

(z) *Nelthorpe v. Pennyman*, 14 Ves. 517; see 1 Dav. 597. The person who interfered in this case was the solicitor of one of the parties.

(a) Ord. 16 July, 1851, r. 2.

(b) See form, *post*, p. 369.

(c) Cf. *ante*, pp. 122 *et seq.*

(d) *Blackbeard v. Lindigren*, 1 Cox, 205.

(e) Dart, 1199, note (z).

(f) See form, *post*, p. 371.

(g) Reg. 8 Aug. 1857, r. 15; Dan. Ch. Pr. 1161, 1162.

(h) Cons. Ord. XXXV. rr. 48, 49; Morgan, 153.

The affidavit of the result of the sale is equally necessary, when the attempt to sell has failed (*i*).

Where a deposit has been received at the sale, the certificate appoints a day for payment of it into court; and if it is not paid in by that day, a summons may be taken out and served on the recipient that he may be ordered to pay it into court within a limited time and to pay the costs of the application, and the order may then be drawn up, endorsed, served and enforced like other orders directing a payment to be made; or, by consent, instead of a separate order, a direction for such payment may be added to the purchaser's order for the payment into court of the balance of his purchase-money (*j*). In practice the auctioneer hands over the deposit to the solicitor, for the latter to pay it into court (*k*).

As soon as he has paid the deposit into court, or, where no deposit has been paid at the sale, immediately after the day appointed for the result to be certified, the auctioneer or other person who has given security to account for the deposit may apply by summons to have his recognizance vacated, or the sum which he paid into court as security paid out to him again (*l*). This application must be supported by the production of an office copy of the chief clerk's certificate of the result of the sale, and office copies of the recognizance and the Accountant General's certificate of the payment into court of the deposit, if any (*m*). The enrolment of the recognizance will be vacated by the Clerk of Enrolments on production of the order (*n*).

(*i*) Dan. Ch. Pr. 1162.

(*j*) Seton, 1187; Dan. Ch. Pr. 1162.

(*k*) See *ante*, p. 178, note (*i*).

(*l*) The affidavit of the result of the sale sets forth the particulars of any deposits received by the person appointed to sell.

(*m*) Dan. Ch. Pr. 1162-3.

(*n*) *Ib.* 1163.

His security being liberated and his charges (*o*) paid, the auctioneer has, as a rule, no further interest in the sale. But circumstances may still occur which will again render his services necessary ; for the sale is not yet complete, and the proceedings may still be reopened.

Reopening
the bid-
dings.

The certificate of the result of the sale is not absolute until eight clear days have elapsed from the date of its being filed : until that interval has passed, the highest bidder has not become the purchaser with the rights and liabilities of an owner (*p*). Formerly the highest bidder was very uncertain of his bargain during this interval ; for the Court would order the biddings to be opened, and the estate again put up for sale, merely on another person offering a substantially higher price (*q*) ; but much inconvenience was found to arise from this practice, and it was at length put an end to by the Sale of Land by Auction Act, 1867 (*r*), the 7th section of which enacts “that the practice of opening the biddings on any sale by auction of land under or by virtue of any order of the High Court of Chancery shall from and after the time appointed for the commencement of this act (*s*) be discontinued, and the highest *bonâ fide* bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price, if any, shall be declared and allowed the purchaser, unless the Court or Judge shall, on the ground of

(*o*) See *supra*, p. 241.

(*p*) 15 & 16 Vict. c. 80, s. 34 ; Cons. Ord. XXXV. r. 52 ; *Ex parte Minor*, 11 Ves. 559 ; *Twigg v. Fifield*, 13 Ves. 517 ; *Palmer v. Goren*, 4 W. R. 688 ; *Bridger v. Penfold*, 1 K. & J. 28 ; *Barlow v. Osborne*, 6 H. L. C. 556 ; but as to life estates, see *Anson v. Towgood*, 1 J. & W. 637 ; *Vesey v. Elwood*, 3 Dr. & War. 74 ; as to reversions : 1 Dav. 598.

(*q*) See *Millican v. Vanderplank*, 11 Hare, 136 ; *Ewing v. Waite*, L. R. 1 Eq. 440.

(*r*) 30 & 31 Vict. c. 48. See also, as to sale by private contract, *In re Bartlett*, 16 Ch. D. 561 ; 50 L. J. Ch. 205.

(*s*) The 1st of August, 1867.

fraud or improper conduct in the management of the sale, upon the application of any person interested in the land, such application to be made to the Court or Judge before the chief clerk's certificate of the result of the sale shall have become binding, either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser and order the land to be resold upon such terms, as to costs or otherwise, as the Court or Judge shall think fit." Misconduct, to cause the biddings to be opened since the act, must be such misconduct as borders on fraud (*t*); if, however, such misconduct be proved, the Court, it seems, will set aside the purchase, though absolutely confirmed (*u*). Where the party conducting the sale purchased, without permission to bid and under a feigned name, the Court, even after the purchase had been confirmed, ordered the estate to be put up again at the price for which he had bought it; and if there should be no higher bidding, he was to be held to his purchase (*v*).

Either before or after the certificate has become binding, the Court will discharge the purchaser and substitute another, upon the latter first bringing the purchase-money into court (*w*). The application for this purpose is made by summons (*x*). Substituting purchaser.

Where the whole or any part of the property remains unsold, it may be again offered for sale in the same manner, and no new order of the Court will be necessary; but leave must be obtained at chambers, when a new time will be Course to be pursued where no sale effected.

(*t*) *Griffiths v. Jones*, L. R. 15 Eq. 279; 42 L. J. Ch. 478; *Delves v. Delves*, L. R. 20 Eq. 77; *Brown v. Oakshott*, 38 L. J. Ch. 717.

(*u*) *Guest v. Smythe*, L. R. 4 Ch. 551; 39 L. J. Ch. 536.

(*v*) *Sidney v. Ranger* (1841), 12 Sim. 118; see Dart, 1196.

(*w*) *Miller v. Smith*, 6 Hare, 609.

(*x*) *Seton*, 1409.

appointed, and the necessary modifications made in the particulars and conditions (*y*). If it is proposed to sell the property in any other way than by public auction, a fresh order must first be made by the Court (*z*).

Resale.

Where a resale is ordered, the proceedings are the same as upon an original sale. It is doubtful whether the estate could be reallotted without a special order, made on special reasons (*zz*).

II. Sales by order or under process of a County Court.

Sale, by order, of personal property.

PERSONAL property directed by an order of a County Court to be sold must be sold under the superintendence of the high bailiff by public auction, unless the court directs otherwise (*a*).

Sale of goods taken in execution.

By the County Courts Act, 1846 (*b*), s. 106, the high bailiff of a County Court has power to appoint brokers and appraisers for the purpose of selling or valuing goods taken in execution under the act, and to direct security to be taken from them for the faithful performance of their duties; and no such goods may be sold to satisfy the warrant of execution, except by a broker or appraiser so appointed.

Who sells.

Custody of goods until sold.

Until sale, such goods must be deposited in a fit place, or a fit person approved by the high bailiff may be put in pos-

(*y*) Dan. Ch. Pr. 1163.

(*z*) *Berry v. Gibbons*, L. R. 15 Eq. 150; 42 L. J. Ch. 231.

(*zz*) Dart, 1204, referring to *Ward v. Cooke*, 9 Sim. 87; *Humphries v. Roberts*, 6 Jur. 680.

(*a*) County Court Rules, 1875, O. XVIII. r. 15; cf. O. II. r. 32: "Where any personal property is directed to be sold by auction, detained or preserved, the high bailiff shall, if the court so direct, superintend such sale, detention or preservation."

(*b*) 9 & 10 Vict. c. 95.

session of them (*c*). The fee for keeping possession until sale, including expenses of removal, storage and all other expenses, is per day, not exceeding five days, sixpence in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute (*d*); but no possession fee is payable, where the execution is paid out at the time of the levy, unless the possession has necessarily lasted more than half an hour (*e*). The goods may not be sold, except at the written request of the owner, until the end of five days after the day on which they were taken, unless they are of a perishable nature (*f*); nor are they to be appraised until the fifth day of the bailiff's holding possession, "unless where the goods are of a perishable nature, or are sold at the request of the party before the expiration of four days, or unless the goods are removed" (*g*). More must not be sold than is necessary to satisfy the execution (*h*). Where goods seized under County Court process are claimed by a third party, it will be lawful to proceed to a sale of the goods notwithstanding the claim, unless the claimant makes a deposit in accordance with the 72nd section of 19 & 20 Vict. c. 108 (*i*). The broker or appraiser is entitled to have out of the produce of the goods sold, sixpence in the pound on the value of the goods, for appraisement, over and above the stamp duty (*j*), and, for advertise-

Possession fee.

Time of sale;

of appraisement.

Quantity to be sold.

Claims of third parties to goods.

Charges for appraising and selling.

(*c*) 9 & 10 Vict. c. 95, s. 106. The high bailiff may from time to time appoint such and so many persons for keeping possession as shall appear to him to be necessary, and may direct security to be taken from them; *ibid*.

(*d*) Schedule A to Treasury Order of 26 October, 1875.

(*e*) County Court Rules, 1875, O. XXXVI. r. 7.

(*f*) 9 & 10 Vict. c. 95, s. 106.

(*g*) County Court Rules, 1875, O. XXXVI. (Costs), r. 8.

(*h*) *Stead v. Gascoigne*, 8 Taunt. 527; *Aldred v. Constable*, 6 Q. B. 370; 8 Jur. 956; *Cook v. Palmer*, 6 B. & C. 739; 9 D. & R. 723.

(*i*) The County Courts Act, 1856; *Cramer v. Matthews*, 7 Q. B. D. 425. See the text of the section, *post*, p. 441.

(*j*) See Chapter III. *ante*, p. 43.

ments, catalogues, sale, commission, and delivery of the goods, one shilling in the pound on the net produce of the sale (*k*).

III. *Sales under Distraints for Rent.*

What is a
distress.

By the common law, a landlord, that is, a person to whom rent is payable and who has the immediate reversion in the property out of which the rent issues, has, as soon as the rent is in arrear, a right to enter upon the property and seize, with certain exceptions, any goods or cattle he may find there, and to hold them as a pledge or security, until the rent in arrear is paid; and it matters not whether the goods so seized are the goods of the tenant or of a stranger (*a*). To this right a power to sell the goods seized has been added by statute (*b*). It is to this remedy that the term distress is properly applied, although many law-writers have used it to signify indifferently the remedy, the process, and the goods seized (*c*).

Sale under
distress
usually by
auction.

This remedy, being the most effectual means that a landlord has of recovering his rent when in arrear, is frequently resorted to; and the sale is usually effected by public auction. The landlord may himself levy the distress, but generally an agent or bailiff is employed; and it is a common practice in the country, especially in the case of small holdings, to employ an auctioneer as bailiff, and to entrust the whole management of the distress to him.

Auctioneer
often
bailiff.

Distress
warrant.

The bailiff should receive from his employer an au-

(*k*) 9 & 10 Vict. c. 95, s. 106. As to the remuneration of several brokers employed, see the text of the section, *post*, p. 440. As to licence, see *ante*, p. 10.

(*a*) Gilbert on Distresses, 35.

(*b*) 2 W. & M. sess. 1, c. 5.

(*c*) Gilbert (on Rents), 92; 3 Bl. 6.

thority in writing, called a "distress warrant" (*d*). This authority has the effect of a guarantee from the landlord to the bailiff that the former has a legal right to distrain and will indemnify the latter against any loss or expense he may incur by reason of the absence of such right, but it will not protect him from the consequences of any act he may do outside his authority, or from the consequences of any negligence or irregularity on his part in proceeding with the distress (*e*). While, therefore, except where he has reason to doubt his employer's solvency, the bailiff will not, as a rule, be concerned to inquire into the right of his employer to distrain, it is on the other hand necessary that he should have an accurate knowledge of his duties as bailiff, and of the forms and precautions which a bailiff must observe. On this account it is intended to refer only shortly to those conditions without which the right to distrain cannot exist, and to mention only a few special cases in which persons not in the position of simple landlords can exercise that right; while the duties of the bailiff in conducting the seizure and sale will be considered somewhat more in detail (*f*).

In order that a person may distrain of common right: Conditions precedent to distress :
 (1) he must have a reversion (*g*) in the premises out of which the rent issues (*h*); (2) there must be an actual demise at a fixed rent, subsisting at the time the distress is made (*i*); and (3) the rent must be in arrear (*j*).

(*d*) See forms, *post*, p. 372.

(*e*) See also *infra*, pp. 258 *et seq.*

(*f*) Upon the subject of distress generally, see Woodf. Ch. XI.

(*g*) "A reversion is where a residue of the estate always doth continue in him that made the particular estate."—Co. Lit. 226.

(*h*) Gilbert on Distresses, 24; 2 Bac. Abr. 196.

(*i*) Gilb. 26; Co. Lit. 96 a; Bull. 119.

(*j*) Bull. 119.

1. The right to distrain is incident to the reversion.

The power is, of common right, incident only to the reversion ; so that, if a lessor assign his reversion, his right to distrain is gone, and he can only recover by an action (*k*), unless he have reserved to himself a right of entry and distress by contract with the lessee (*l*) ; but if he grant a lease to commence after the expiration of the subsisting lease, his reversion will still enable him to distrain under the earlier lease (*m*).

Tenant sub-letting.

Any reversion, however small, will suffice ; so that, if a lessee sublet for a term shorter than his own, though but by one day, he can distrain (*n*) ; but not if he assign his lease. And it has been held that a tenant from year to year, subletting from year to year, may distrain (*o*).

Mortgagor.

If the landlord has assigned his reversion by way of mortgage, he cannot distrain for arrears of rent due under a lease prior to the mortgage (*p*) ; but if, as is usually the case, the mortgagor is permitted by the mortgagee to continue in the receipt of the rents, he, during such permission, is presumed by the law to have authority from the mortgagee, if it should become necessary, to realize the rent by distress, and to distrain for it in the mortgagee's name, as his bailiff (*q*). If the lease was granted after the date of the mortgage, although this would be void as against the mortgagee, yet it is good as between the mortgagor and his

(*k*) Gilb. 24 ; 2 Bac. Abr. 106 ; Bull. 26.

(*l*) Bull. 54 ; *Preece v. Corrie*, 5 Bing. 24 ; 2 M. & P. 57 ; *Pascoe v. Pascoe*, 3 Bing. N. C. 898 ; 5 Scott, 117 ; 3 Hodges, 188.

(*m*) *Smith v. Day*, 2 M. & W. 684 ; M. & H. 135 ; *Blackford v. Cole*, 5 C. B. N. S. 514.

(*n*) Bull. 54 ; Woodf. 384 ; *Wade v. Marsh*, Latch, 211.

(*o*) *Oxley v. James*, 13 M. & W. 209 ; *Curtis v. Wheeler*, 1 Moo. & N. 493.

(*p*) Bull. 74 ; Woodf. 387.

(*q*) *Trent v. Hunt*, 9 Exch. 14 ; 22 L. J. Ex. 318 ; 17 Jur. 899.

tenant, at any rate, until the mortgagee interferes; and the mortgagor may distrain for rent due under it (*r*).

A mortgagee, after giving notice of his mortgage to the tenant, is entitled to receive rent due under a lease prior to the mortgage, and may distrain for it (*s*); but if the lease be subsequent to the mortgage, mere notice is not enough (*t*): there must be something amounting to consent on the part of the tenant, such as a payment of rent, or acquiescence in a notice calling on him to pay rent (*u*), in other words, a tenancy, express or implied, must exist between the tenant and the mortgagee. A mortgagee may also distrain, when by the attornment clause in the mortgage deed the mortgagor has become tenant to the mortgagee; and he may do so, even though he have not executed the deed, if it be only a tenancy at will or for a term for which a deed is not necessary (*v*).

Executors and administrators may by statute (*w*) distrain upon land demised for any term or at will for arrears of rent due to the lessor or landlord during his life-time in the same manner as he might have done, and such arrears may be distrained for after the end or determination of the term, or lease at will, provided that the distress be made within six calendar months after the determination of the term or lease and during the continuance of the possession of the

(*r*) *Per* Alderson, B., 9 Exch. at p. 22.

(*s*) *Moss v. Gallimore*, 1 Doug. 266; 1 Sm. L. C. 269; *Pope v. Biggs*, 9 B. & C. 245.

(*t*) *Evans v. Elliot*, 9 A. & E. 342; 1 W. W. & H. 144; 1 P. & D. 256.

(*u*) *Rogers v. Humphreys*, 4 A. & E. 299; 5 N. & M. 511; 1 H. & W. 625.

(*v*) That is, not more than three years, at a rent of not less than two-thirds of the improved value. *Morton v. Woods*, 9 B. & S. 632; L. R. 4 Q. B. 293; 37 L. J. Q. B. 81; 17 W. R. 414.

(*w*) 32 Hen. VIII. c. 37, s. 1; 3 & 4 Wm. IV. c. 42, ss. 37, 38.

tenant from whom the arrears are due. Executors may distrain at once, before probate (*x*); but administrators cannot do so before the grant of letters of administration (*y*). Where there are several executors or administrators, they being in law one person, either all may join in distraining, or one may distrain alone for the whole rent due (*z*). Where a lessee dies before the expiration of the term, and his executors or administrators continue in possession, a distress may be taken for the whole amount of rent due during the term (*a*), not exceeding six years.

Husband
and wife.

A married woman can in no case distrain alone (*b*), though she may, in some cases, as when she has a freehold estate in the lands, join her husband in making a distress; but, as a general rule, a husband may distrain alone for all rent due in the right of his wife, whether it accrue to her in her own right or as executrix or administratrix (*c*); and he may distrain after her death.

Joint tenants.

Where there are several landlords having a joint interest in the premises (as is generally the case with mortgagees, trustees and executors), in which case they are legally denominated joint tenants, they hold by one title and one right, and cannot, therefore, have separate distresses; but one may distrain for rent due to himself and the others, even without their express authority (*d*), and may appoint a bailiff to distrain for the rent due to all (*e*).

(*x*) *Whitehead v. Taylor*, 10 A. & E. 210; 2 P. & D. 367; 4 Jur. 247; cf. *Woolley v. Clark*, 5 B. & Ald. 744; 1 D. & R. 409.

(*y*) *Keene v. Dee*, 1 Alc. & N. 496 n.

(*z*) Bull. 67, & *infra*.

(*a*) Wms. on Exors., 8th ed., 2009.

(*b*) Bull. 54.

(*c*) 32 Hen. VIII. c. 37, s. 3.

(*d*) *Leigh v. Shepherd*, 2 B. & B. 465; 5 Moore, 297.

(*e*) *Robinson v. Hofman*, 4 Bing. 562; 1 M. & P. 574; 3 C. & P. 234.

But where several landlords are interested in the premises as tenants in common, they have separate estates, and must each distrain severally; or all may join in making one distress for their several shares (*f*): one cannot distrain alone for the others, except as their agent. Tenants in common.

(2.) There must be an actual existing tenancy at a fixed rent (*g*); but very slight circumstances are enough to imply this (*h*). If the landlord puts an end to a tenancy by notice to quit, he cannot distrain for rent accruing due after the date mentioned in the notice has expired (*i*), unless the circumstances show a new tenancy after that date (*k*). 2. There must be an existing tenancy at a fixed rent.

Under the rule now under discussion, the landlord could not distrain after the expiration of the tenancy, so that he lost this form of remedy for any rent that might then be due. To alter this it was enacted by parliament (*l*) that persons having rent in arrear upon any lease for life or lives, or for years, or at will, ended or determined, might distrain within six calendar months after the determination of the term, in the same manner as they might have done if the lease had not determined; provided that the distress were made during the continuance of the landlord's interest, and during the possession of the tenant from whom the arrears were due: a power which was by other statutes given to executors and administrators (*m*). Exception: 8 Anne, c. 14, ss. 6, 7.

Upon this statute it has been decided that a distress may be made after the six months, during the period that the tenant, according to the custom of the country, has the away-going

(*f*) Bull. 48.

(*g*) Gilb. 26; *Dunk v. Hunter*, 5 B. & Ald. 322.

(*h*) Woodf. 116.

(*i*) *Williams v. Stiven*, 9 Q. B. 14; 15 L. J. Q. B. 321; 10 Jur. 804.

(*k*) *Jenner v. Clegg*, 1 Moo. & Rob. 213.

(*l*) 8 Anne, c. 14, ss. 6, 7.

(*m*) See *supra*, p. 255.

crop on the premises (*n*), or the use of the premises under such custom (*o*); and the statute is not confined to a wrongful holding over by the tenant, but applies to a case where the landlord permits the tenant to retain possession of part of the premises after the term has expired (*p*); and the distress may be made during the occupation of the tenant's executor, for arrears accrued during the tenant's lifetime (*q*).

3. Rent
must be in
arrear.

(3.) The right cannot arise until the rent is in arrear, that is, until after midnight on the day on which it falls due (*r*), or, if there be a condition precedent, then until after that condition is fulfilled (*s*); and the right will be destroyed by release under seal, payment, or anything equivalent to payment, such as a proper tender of the amount due (*t*).

It is not absolutely necessary that a bailiff employed to effect a distress should be armed with a distress warrant; for, although a man distrain without express authority, subsequent assent on the part of the person for whom the distress was made will cure the defect (*u*); but it will not be prudent in a bailiff to act without a warrant.

Warrant,
by whom
to be
signed.

The distress warrant (*v*) should be signed by the person who is entitled to make the distress, and in the case of a joint distress it should be signed by all the parties dis-

(*n*) *Beavan v. Delahay*, 1 H. Bl. 5.

(*o*) *Knight v. Bennett*, 3 Bing. 364.

(*p*) *Nuttall v. Staunton*, 4 B. & C. 51; 6 D. & R. 155.

(*q*) *Braithwaite v. Cooksey*, 1 H. Bl. 465.

(*r*) Bull. 108; *Cutting v. Derby*, 2 W. Bl. 1075.

(*s*) *Mechelen v. Wallace*, 7 A. & E. 54.

(*t*) Woodf. 377. As to tender, see *infra*, p. 274.

(*u*) *Trevillian v. Pine*, 11 Mo. 112; *Duncan v. Meikleham*, 3 C. & P. 172; Bull. 130.

(*v*) See *supra*, p. 252.

training (*w*), or by one only, to authorize a distress for rent due to all (*x*).

The warrant amounts to a representation that the person signing it has a right to distrain, and therefore gives, by implication, an indemnity to the broker, extending to all acts legally done by him in pursuance of the authority (*y*); but it will not protect him from the consequences of doing, in the process of the distress and sale, any improper act: for instance, if he seizes goods privileged from distress (*z*), or negligently damages goods in removing them (*a*). If it is intended that the bailiff shall be held harmless for any act that might otherwise be outside his authority, it should be stated in express terms upon the warrant. In a case where, brokers being ordered to seize goods on an auctioneer's premises, third parties claimed the goods as their own, and the brokers required an indemnity from their employer, which he gave them, and the third parties recovered in an action damages against the brokers, it was held that the employer was bound to make good to the brokers the loss they had sustained (*b*).

The employer, though not liable to the tenant for acts done by the broker which are not warranted by his authority and are illegal, such, for example, as seizing fixtures (*c*), is liable for irregularities committed by him in making and conducting the distress, such as selling the goods without

(*w*) *Buller's Case*, 1 Leon. 50.

(*x*) *Leigh v. Shepherd*, 2 B. & B. 465; *Robinson v. Hofman*, 4 Bing. 562.

(*y*) *Bullen & Leake*, 177; *Woodf.* 417.

(*z*) *Toplis v. Grane*, 5 Bing. N. C. 636; 7 Scott, 620.

(*a*) *Draper v. Thompson*, 4 C. & P. 84.

(*b*) *Toplis v. Grane*, *ubi supra*; and see *Ibbett v. De la Salle*, 6 H. & N. 233; 30 L. J. Exch. 44.

(*c*) *Freeman v. Rosher*, 13 Q. B. 780; 18 L. J. Q. B. 340; 13 Jur. 881; cf. *Lewis v. Read*, 13 M. & W. 834; 14 L. J. Ex. 295.

giving the usual notice (*d*) or without appraisement (*e*) ; and the broker is not only liable to the tenant for the consequences of such irregular proceedings, but if, through his negligence or want of knowledge, the landlord is put to any loss (as he would be, if the tenant recovered damages against him in respect of any such irregularity), he will also be liable to compensate the latter (*f*).

At what
hour a dis-
tress may
be made.

A distress before sunrise or after sunset is illegal (*g*) ; and, therefore, a distress must not be made until after sunrise on the day after the last arrear of rent falls due, and must be between the hours of sunrise and sunset ; and persons distraining are bound to take care that they distrain beyond doubt in the day-time, and they ought not to go so very near the limits as to raise any question on the subject (*h*).

Where.

The general rule is that the distress can only be made upon the lands or premises out of which the rent issues (*i*). To this rule, however, the following exceptions have been created by statute :—The landlord may distrain cattle or stock of his tenant depasturing on any common appendant or appurtenant, or in anywise belonging, to all or any part of the premises demised (*j*) ; and, in order to prevent tenants from avoiding distresses by fraudulent removal of their goods, it was enacted by statute 11 Geo. II. c. 19, s. i., that “ in case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements

Common
appurten-
ant.

Fraudulent
removal.

(*d*) See *infra*, p. 277.

(*e*) *Haselere v. Lemoyne*, 5 C. B. N. S. 530 ; 28 L. J. C. P. 103 ; 4 Jur. N. S. 1279. See also *infra*, p. 277.

(*f*) Woodf. 417.

(*g*) *Tutton v. Darke*, 5 H. & N. 647 ; 29 L. J. Ex. 271 ; 2 L. T. N. S. 361 ; 6 Jur. N. S. 983.

(*h*) *Nixon v. Freeman*, 29 L. J. Ex. 274.

(*i*) Bull. 124 ; Stat. Marl. 52 Hen. III. c. 15.

(*j*) 11 Geo. II. c. 19, s. 8.

or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his, her or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due or made payable, it shall and may be lawful to or for every landlord &c., or any person or persons by him, her or them for that purpose lawfully empowered, within the space of 30 days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such landlord &c. in and upon such premises for such arrears of rent; any law, custom or usage to the contrary in anywise notwithstanding." Sect. 2 provides "that no landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bonâ fide* and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid." Sect. 7 enacts "that where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, out-house, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her or their steward,

bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to his, her or their assistance the constable, headborough, borsholder or other peace officer of the hundred, borough, parish, district or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein ; and, in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the day-time to break open and enter into such house, barn, stable, out-house, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place."

The words in the statute are "fraudulent or clandestine" and apply to all cases where the tenant removes the goods in order to deprive the landlord of his remedy by distress ; and, therefore, if the tenant remove the goods openly so that the removal cannot be called clandestine, yet, if it be fraudulent (which is a question for the jury), the landlord is entitled to seize the goods under the statute (*k*). But the mere removal from the premises, even when rent is in arrear, is not of itself sufficient to justify the landlord in following and seizing the goods, unless he can prove that the removal was effected with a view to elude a distress (*l*).

The removal must have taken place after the rent has become due (*m*). The rent is due, though not in arrear, on

(*k*) *Opperman v. Smith*, 4 D. & R. 33 ; *Back v. Meats*, 5 M. & Sel. 200 ; *John v. Jenkins*, 1 C. & M. 227.

(*l*) *Parry v. Duncan*, 7 Bing. 243.

(*m*) *Rand v. Vaughan*, 1 Bing. N. C. 767 ; *Watson v. Main*, 3 Esp. 15.

quarter-day ; therefore, if the tenant fraudulently removes the goods on the day on which the rent falls due, the landlord may on the following day (for the rent is not in arrear till then), and within thirty days from the date of the removal, under the statute follow and seize the goods (*n*). The statute applies to the goods of the tenant only, and not to those of a stranger (*o*). Wherever it is necessary to use force (as, to break into premises), a constable must be present, and if the goods removed are secured in a dwelling-house, a previous application must be made to a magistrate : the landlord, to be justified under the statute, must fulfil the conditions imposed by it (*p*) ; but it is not necessary in other cases that a party seizing goods fraudulently removed should first call to his assistance an ordinary peace officer : it is sufficient if he be assisted by a person appointed special constable for the purpose (*q*). The proceedings after seizure are the same as in ordinary cases.

The distress may be made on any part of the land ; and, therefore, where a tenant, after the expiration of the lease, continued in possession of a part only of the land demised, and the landlord distrained, it was held that he could distress on the part for arrears of rent of the whole (*r*).

It is expressly enacted (*s*) that no distress shall be made on a highway ; but if the landlord or his agent comes to distrain cattle which he sees upon the land, and the tenant or any other person drives the cattle off the land, the landlord or his agent may then follow and distrain them even

Distress
may be
made on
part of
the land.

But not on
highway.
Exception.

(*n*) *Dibble v. Bowater*, 2 E. & B. 564 ; 22 L. J. Q. B. 396.

(*o*) *Thornton v. Adams*, 5 M. & Sel. 38 ; *Postman v. Harrell*, 6 C. & P. 225 ; *Fletcher v. Marillier*, 9 Ad. & E. 457.

(*p*) *Rich v. Woolley*, 7 Bing. 651, 660.

(*q*) *Cartwright v. Smith*, 1 M. & Rob. 284.

(*r*) *Nuttall v. Staunton*, 4 B. & C. 51.

(*s*) Stat. Marl., 52 Hen. III. c. 15.

on the highway (*t*). But if the cattle of themselves, after the view, go out of the land, or if the tenant or any other person, after the view, remove them for any other purpose than to prevent the distress, the landlord cannot distrain them (*u*).

Entry upon
the pre-
mises.

It is not lawful for the bailiff to make a forcible entry upon the premises in order to distrain. He may not, therefore, break open the outer door (*v*). And this rule is not confined to dwelling-houses: he may not break open any building (*w*). On the same principle, if a window is fastened, he may not open it (*x*); and even if the window be shut merely, but not fastened, it is a trespass, if he open and enter by it (*y*); nor may he, if the front door be shut, climb over a fence at the back and so effect an entrance (*z*). If he enter in a manner in which he has no right to enter, the distress is void, and he is a trespasser (*a*); but if he can get into the premises by any means without committing a trespass, he can then lawfully distrain (*b*). Where the landlord occupied the floor above the tenant, there being nothing but a board between them, it was held that an entry effected by removing the board was not a trespass (*c*); and the landlord may open the outer door in the ordinary way in which persons using the premises are accustomed to open

(*t*) Bull. 125, 126.

(*u*) Co. Lit. 161 a; 2 Inst. 132.

(*v*) *Semayne's Case*, 5 Co. R. 91; 1 Sm. L. C. 105.

(*w*) *Brown v. Glenn*, 20 L. J. Q. B. 205; 16 Q. B. 254; 15 Jur. 189.

(*x*) *Attack v. Bramwell*, 3 B. & S. 520; 32 L. J. Q. B. 146; 9 Jur. N. S. 892; *Hancock v. Austin*, 14 C. B. N. S. 634; 32 L. J. C. P. 252; 8 L. T. N. S. 429; 11 W. R. 833.

(*y*) *Nash v. Lucas*, L. R. 2 Q. B. 590.

(*z*) *Scott v. Buckley*, 16 L. T. N. S. 573.

(*a*) *Attack v. Bramwell*, *ubi supra*.

(*b*) Bull. 132.

(*c*) *Gould v. Bradstock*, 4 Taunt. 562.

it (*d*); and he may enter through an open window (*e*); and it has been held that he may climb over a fence and so gain access to the house by an open door (*f*).

If the bailiff be forcibly turned out, he is justified in making a forcible re-entry and in breaking in the door to that end (*g*); and if he leave the premises for a temporary purpose, not intending to abandon the distress, and find the door locked on his return, he may break it open (*h*).

Re-entry,
where
bailiff
evicted.

With respect to the things that may be taken, it may be stated as a general rule that all movable chattels and personal effects found upon the premises are liable to be taken, whether they be the property of the tenant or of any other person (*i*). To this rule there were always at common law various exceptions, partly arising from the nature of the remedy, which was that goods could only be taken as a pledge (upon which ground nothing could be taken but what could be restored again in the same plight), partly from grounds of public policy, to prevent breaches of the peace and for the protection of commerce (*j*). To these exceptions others have been added by statute, and the whole may now be stated as follows:—

What goods
may not be
seized.

1. Things in actual and personal use; because to seize these might lead to a breach of the peace. Therefore, a horse, while a man is riding upon him, or an axe in a man's

1. Things
in actual
use.

(*d*) *Ryan v. Shilcock*, 7 Exch. 72; 21 L. J. Ex. 55; 15 Jur. 1200.

(*e*) *Tutton v. Darke*, 5 H. & N. 647; 29 L. J. Ex. 271.

(*f*) *Eldridge v. Stacey*, 15 C. B. N. S. 458; 10 Jur. N. S. 517; 9 L. T. N. S. 291; 12 W. R. 51.

(*g*) *Eagleton v. Gutteridge*, 11 M. & W. 465; 2 D. N. S. 1053; 12 L. J. Ex. 859.

(*h*) *Bannister v. Hyde*, 2 E. & E. 627; 29 L. J. Q. B. 141; 1 L. T. N. S. 438; 6 Jur. N. S. 171.

(*i*) Cf. *supra*, 252.

(*j*) See *Simpson v. Hartopp*, 1 Sm. L. C. 439, where all the exceptions are dealt with in the notes.

hand, cutting wood, and the like, cannot be distrained for rent (*k*). On the same principle, wearing apparel may not be taken while in wear; though it seems that it may be, if the wearer have laid it aside, though merely for the purpose of repose (*l*).

2. Things protected for the benefit of trade.

2. Things delivered to a person exercising a trade, to be carried, wrought or managed in the way of his trade; as, a horse standing in a smith's shop, to be shod, or materials sent to a weaver, to be woven, or cloth to a tailor, to be made up (*m*). The exemption applies also to goods in the hands of a carrier, for carriage, goods of a traveller at an inn (*n*), goods on the premises of a factor, for sale, or of a warehouseman, for safe custody (*o*), goods pledged at a pawnbroker's (*p*), goods on the premises of an auctioneer for the purpose of sale (*q*), and the carcass of a beast sent to a butcher to be slaughtered (*r*). It has been said that the test is whether the goods are placed in the hands of the tenant with a view to having labour and skill bestowed on them, or for the purpose of buying and selling (*s*); and on this ground it has been held that a carriage and horses standing at livery are not exempt (*t*); but this decision has been doubted, and it appears to be scarcely consistent with other decisions (*u*): the true reason for the

(*k*) *Simpson v. Hartopp*, 1 Sm. L. C. 439, 444; Co. Lit. 47a.

(*l*) *Bissett v. Caldwell*, Peak. 50; *Baynes v. Smith*, 1 Esp. 206.

(*m*) *Simpson v. Hartopp*, 1 Sm. L. C. 439, 442.

(*n*) *Per Blackburn, J.*, in *Lyons v. Elliott*, 1 Q. B. D. 214; 45 L. J. Q. B. 159.

(*o*) *Thompson v. Mashiter*, 1 Bing. 283; 8 Moore, 254.

(*p*) *Swire v. Leach*, 18 C. B. N. S. 479; 34 L. J. C. P. 150; 11 L. T. N. S. 680; 11 Jur. N. S. 179; 13 W. R. 385.

(*q*) *Brown v. Arundell*, 10 C. B. 55; 20 L. J. C. P. 30; *Williams v. Holmes*, 8 Ex. 861; 22 L. J. Ex. 283.

(*r*) *Brown v. Shevill*, 2 A. & E. 138; 4 N. & M. 277.

(*s*) *Parsons v. Gingell*, 4 C. B. 545; 16 L. J. C. P. 227; 11 Jur. 437.

(*t*) *Ibid.*

(*u*) See *Miles v. Furber*, L. R. 8 Q. B. 77; 21 W. R. 262.

exemption seems to be that the goods are held in the way of trade; and on this ground it has been suggested that cattle which are taken in by the tenant to feed for hire (which is called agisting) could not be seized, if the tenant carried on the trade of agisting cattle (*v*); and it has been decided that furniture at a depository is exempt (*w*). But the exemption only attaches to the premises; thus, although goods sent to an auctioneer to sell cannot be seized while on his premises (*x*), they will not be privileged upon premises in the occupation of another person (*y*).

3. Goods in the custody of the law, such as cattle distrained damage feasant, or goods taken by the sheriff under an execution (*z*); and goods are equally in the custody of the law, whether in the hands of the sheriff or of his vendee (*a*). At common law the landlord's remedy was entirely defeated by this rule, if a creditor had already succeeded in levying an execution; but early in the last century it was enacted that no goods taken under an execution on lands leased for life, years or will, or otherwise, might be removed, unless the party at whose suit the execution issued, before the removal of the goods, paid the arrears of rent due at the time of the execution, not exceeding one year's rent (*b*).

Where growing crops have been seized and sold under a *fi. fa.* (*c*), but not removed, they may be distrained for the

(*v*) *Ibid.*

(*w*) *Ibid.*

(*x*) *Brown v. Arundell*, 10 C. B. 55; 20 L. J. C. P. 30.

(*y*) *Lyons v. Elliott*, 1 Q. B. D. 214; 45 L. J. Q. B. 159.

(*z*) Co. Lit. 27a.

(*a*) *Wharton v. Naylor*, 12 Q. B. 673; 17 L. J. Q. B. 278.

(*b*) 8 Anne, c. 14, s. 1. See form, *post*, p. 375.

(*c*) Under stat. 2 W. & M. sess. 1, c. 5, s. 3. As to county court process, see 19 & 20 Vict. c. 108, s. 75, *post*, p. 441; and Form 9, *post*, p. 376.

3. Things
in the
custody of
the law.

rent that may accrue and become due after the date of such seizure and sale, provided there be no other sufficient distress on the premises (*d*).

Under the Bankruptcy Act, 1869 (*e*), the landlord's right to distrain is limited to one year's rent due prior to the bankruptcy of the tenant.

4. Fix-
tures.

4. Things annexed to the freehold, as, furnaces, millstones, chimney-pieces and the like, cannot be distrained, because they cannot be taken away without damage to the freehold, which the law will not allow (*f*). Even fixtures which the tenant has a right to remove during his term are not distrainable (*g*); wherein is a distinction between an execution and a distress, for under the former tenants' fixtures may be seized (*h*).

If, however, the landlord merely affects to distrain upon the fixtures, as by including them in the notice of distress and advertising them for sale, but does not seize or sever them, that will not give the tenant a cause of action (*i*).

5. Things
that cannot
be restored
in the same
plight.

5. Things that cannot be restored again in as good a plight as they were in at the time the distress was taken (*j*). This rule arose from the fact that at common law the goods were taken only as a pledge and could not be sold (*k*). Hence it has been said that money, unless in a bag, could not be distrained, because the identical pieces could not be known (*l*). For this reason perishable commodities, such as butcher's

(*d*) 14 & 15 Vict. c. 25, s. 2.

(*e*) 32 & 33 Vict. c. 71, s. 34.

(*f*) *Simpson v. Hartopp*, 1 Sm. L. C. 439; Co. Lit. 47 a.

(*g*) *Darby v. Harris*, 1 Q. B. 895; 1 G. & D. 234; 5 Jur. 988. But see, as to machinery fixed to the freehold only for the purpose of being more conveniently used as machinery, *Hellawell v. Eastwood*, 6 Ex. 295.

(*h*) *Poole's Case*, 1 Salk. 368.

(*i*) *Beck v. Denbigh*, 29 L. J. C. P. 273.

(*j*) Co. Lit. 47 a.

(*k*) See *supra*, p. 252.

(*l*) 1 Rol. Abr. 607.

meat, cannot be taken (*m*); and fixtures may be considered as coming also under this rule (*n*).

6. Animals wild by nature, such as rabbits, deer &c.; for the law recognizes no property in such (*o*). But deer in an enclosure not being a park are not considered as *feræ naturæ* (*p*). It was formerly said that dogs could not be distrained, as presumably worthless; but the better opinion is that they now may; and there is no doubt that they now form a valuable kind of property (*q*).

6. Animals
*feræ
naturæ.*

7. The doctrine of the common law that the landlord could seize, in satisfaction of the rent, any goods found on the premises, unless they fell within the exceptions named, worked much hardship on lodgers, whose goods, although they had paid their rent to the tenant, might still be seized by the superior landlord. On this account, in 1871, a statute (*r*) was passed, by which it was enacted (s. 1) that "if any superior landlord shall levy, or authorize to be levied, a distress on any furniture, goods or chattels of any lodger, for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that such furniture, goods or chattels are the property, or in the lawful possession, of such lodger, and also setting forth whether any, and what, rent is due,

7. Goods
of lodgers.

(*m*) *Morley v. Pincombe*, 2 Exch. 101; 18 L. J. Ex. 272.

(*n*) *Darby v. Harris*, 1 Q. B. 895; 1 G. & D. 234; 5 Jur. 988.

(*o*) Co. Lit. 47; Com. Dig. C.

(*p*) *Davies v. Powell*, Willes, 46.

(*q*) See notes to *Simpson v. Hartopp*, 1 Sm. L. C. 450; Bull. 90.

(*r*) 34 & 35 Vict. c. 79.

and for what period, from such lodger to his immediate landlord ; and such lodger may pay to the superior landlord, or to the bailiff or other person employed by him as aforesaid, the rent, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of such superior landlord. And to such declaration shall be annexed a correct inventory, subscribed by the lodger, of the furniture, goods and chattels referred to in the declaration ; and if any lodger shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanour."

(*Sic.*)

By sect. 2, "if any superior landlord, or any bailiff or other person employed by him, shall, after being served with the before-mentioned declaration and inventory, and after the lodger shall have paid or tendered to such superior landlord, bailiff or other person, the rent, if any, which by the last preceding section such lodger is authorized to pay, *shall* levy or proceed with a distress on the furniture, goods or chattels of the lodger, such superior landlord, bailiff or other person shall be deemed guilty of an illegal distress, and the lodger may apply to a justice of the peace for an order for the restoration to him of such goods ; and such application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into."

It is not as yet possible to define a lodger under this

act. In a case where a person held substantially the whole house, and the immediate tenant only retained possession of a room in the basement and two or three empty attics and a stable, it was held that the former was a lodger within the meaning of the act, although the agreement under which he held might make him an undertenant, Lindley, J., saying: "There certainly is considerable difficulty in determining who is a lodger within the meaning of this act. It is said that this plaintiff was an undertenant, and not a mere lodger. Looking at the main object of the act, I am not satisfied that an undertenant who resides with his family and servants in certain rooms of a house, other rooms of which are at the same time occupied by the tenant and his family, cannot be a lodger; though probably the act would not apply to an undertenant who has the exclusive possession and occupation of the entire house (s)."

8. There is another class of exemptions, namely, of things which are only conditionally, not absolutely, privileged, and may only be taken when there is no other sufficient distress. These are:—

1. Beasts of the plough and sheep (t). But an action will not lie for taking them, if there is no other sufficient distress on the premises save growing crops (u). Colts, steers and heifers are not included in this class. The exemption extends to the sheep of a subtenant (v).

2. Implements of trade (w), which are absolutely privileged.

(s) *Phillips v Henson*, 3 C. P. D. 26, 32.

(t) 51 Hen. III. st. 4.

(u) *Piggott v Birtles*, 1 M. & W. 441. For the landlord has a right to resort to subjects of distress which are immediately available to raise the arrears of rent by sale, and is not bound to take those which cannot be productive till a future period; *ibid.* 451.

(v) *Keen v. Priest*, 4 H. & N. 236; 28 L. J. Exch. 157; 32 L. T. 131; 7 W. R. 376.

(w) Co. Lit. 47 a.

8. Things exempt only if there is other sufficient distress:

a. beasts of the plough, and sheep;

b. implements of trade.

leged, while in actual use (*x*), but otherwise only if there is no other sufficient distress on the premises (*y*).

9. Goods of ambassadors ; gas meters ; railway rolling stock.

As to corn and growing crops.

9. There are also further exceptions added by statute, which it is only necessary here to name. These are : the goods of an ambassador (*z*) ; gas meters, being the property of a gas company incorporated by act of parliament (*a*) ; railway rolling stock, when it is not the actual property of the tenant (*b*).

Corn and growing crops were originally within the exceptions relating to things annexed to the freehold and things that could not be restored in the same plight, and were therefore exempt from distress (*c*) ; but now by statute (*d*) the landlord may seize under a distress sheaves or cocks of corn or corn loose or in the straw (which includes corn whether thrashed or not) (*e*) or hay in any barn or granary or on any hovel, stack or rick, or otherwise on any part of the land or ground charged with the rent, and lock up or detain the same in the place where it shall be found, until it shall be replevied or sold in default of replevin (*f*) ; but it may not be removed from such place to the damage of the owner ; and by another statute (*g*) a landlord may also seize as a distress for rent all sorts of corn, grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing upon any part of the

(*x*) *Ante*, p. 265.

(*y*) *Nargett v. Nias*, 1 E. & E. 439 ; 28 L. J. Q. B. 143 ; 5 Jur. N. S. 198.

(*z*) 7 Anne, c. 12, s. 3.

(*a*) 10 Vict. c. 15, s. 14.

(*b*) 35 & 36 Vict. c. 50, s. 3.

(*c*) Co. Lit. 47 a.

(*d*) 2 W. & M. sess. 1, c. 5, s. 3.

(*e*) *Anon.* Lutw. 214.

(*f*) As to replevin and sale, see *infra*, 278.

(*g*) 11 Geo. II. c. 19, ss. 8, 9.

premises, and the same may cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premises, or, if there be none such, then in any other barn or proper place that the landlord may provide, as near as may be to the premises, and in convenient time appraise, sell or otherwise dispose of the same towards the satisfaction of the rent and charges, the appraisement to be taken when the same is cut, gathered, cured and made, and not before; provided that notice (*h*) of the place where the distress is lodged shall be given to the tenant, or left at his last place of abode, within one week after it has been so lodged, and if the tenant shall pay or tender the arrears of rent and costs of the distress, before the corn &c. be cut, the distress shall cease and the corn &c. be delivered up to him. The word product only applies to such products as are capable of becoming ripe and being cut, gathered and laid up, when ripe, and therefore does not include trees growing in the grounds of a nurseryman, which, although removable by the tenant, are not distrainable (*i*).

The bailiff must be careful to distrain for the amount Amount. stated in his warrant, and neither more nor less. For if he distrain for more, the distress may be excessive, in which case the landlord will be liable to pay damages to the tenant, and the bailiff to pay damages to the landlord, or the tenant, or both. On the other hand, if he distrain for less, the landlord may suffer damage, for which the bailiff will be liable; for it is not permitted to have several distresses for the same rent, when enough might have been had at the first, if the distrainer had thought proper (*j*);

(*h*) See Form 4, *post*, p. 373.

(*i*) *Clark v. Gaskarth*, 8 Taunt. 431; 2 Moore, 491; *Clark v. Calvert*, 3 Moore, 96.

(*j*) *Hutchins v. Chambers*, 1 Burr. 579.

and if the entire sum be split, and part distrained at one time, and part at another, the second seizure will be illegal (*k*); so that, if too little be distrained for, the landlord will lose this particular remedy for the balance. It must not, however, be supposed that the amount must in value be neither more nor less than the rent distrained for, provided the first seizure be made for the whole amount that is due: if it turn out afterwards that the bailiff has made a mistake as to the value of the goods, there is no reason why he should not complete the distress by a further seizure (*l*).

But although he is not bound to calculate very nicely the value of the property seized, he must take care that some proportion is kept between that and the sum for which he is entitled to take it (*m*). It does not, however, matter, if the distress be for more rent than is due, if the value of the goods seized does not exceed in amount the rent which is due (*n*). The utmost amount of rent that can be distrained for is six years' (*o*); and if the tenant be bankrupt, then for one year prior to the adjudication (*p*); and in all cases the right to the rent must have accrued within twelve years (*q*).

Tender.

If, after the warrant is given to the bailiff, but before he has seized the goods under it, a tender of the full amount of the rent really due be made to the landlord or his agent, it will be illegal to execute the distress, and all parties to

(*k*) Bull. 111.

(*l*) *Hutchins v. Chambers*, 1 Burr. 579.

(*m*) *Willoughby v. Backhouse*, 2 B. & C. 821; 4 D. & R. 539; Bull. 201; *Smith v. Ashforth*, 29 L. J. Ex. 259.

(*n*) *Tancred v. Leyland*, 16 Q. B. 665, 677; 20 L. J. Q. B. 316; 15 Jur. 394.

(*o*) 3 & 4 Wm. IV. c. 42, s. 42.

(*p*) Bankruptcy Act, 1869, s. 34.

(*q*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57).

doing so will be liable in an action (*r*). If, after the seizure is made, and before the goods are impounded, the rent and expenses attending the seizure are tendered, the distress must not be proceeded with (*s*). The tender need not necessarily be made to the bailiff, but it may be made to the landlord (*t*) or to his agent (*u*). The bailiff, however, has *ex officio* authority to receive the rent; therefore, if he refuses the tender, although on the ground that the landlord's solicitor has forbidden him to accept the rent, and proceeds with the distress notwithstanding, both he and the landlord will be liable (*v*). But the man in possession, not being the bailiff, has no such authority (*w*); nor has a servant (*x*). A tender after impounding is altogether too late (*y*). If, however, tender of rent and expenses be made within the five days after the distress is taken, and before the sale, though the goods be lawfully impounded, a sale will be unlawful (*z*). The tender must be for the full amount due, but need not include expenses of the distress, if made before the seizure is effected (*a*). It must be un-

(*r*) *Bennett v. Bayes*, 5 H. & N. 391; 29 L. J. Ex. 224; 2 L. T. N. S. 156; 8 W. R. 320.

(*s*) *Evans v. Elliot*, 9 A. & E. 342; 1 P. & D. 256; 1 W. W. & H. 144; *Ladd v. Thomas*, 12 A. & E. 117; 4 P. & D. 9; 4 Jur. 798; and see *The Six Carpenters' Case*, 1 Sm. L. C. 137.

(*t*) *Smith v. Goodwin*, 4 B. & Ad. 413; 1 N. & M. 371.

(*u*) *Bennett v. Bayes*, *ubi supra*.

(*v*) *Hatch v. Hale*, 15 Q. B. 10; 19 L. J. Q. B. 289; 14 Jur. 459; cf. *Gilb.* 82, 83.

(*w*) *Boulton v. Reynolds*, 2 E. & E. 369; 29 L. J. Q. B. 11; 6 Jur. N. S. 46.

(*x*) *Pilkington v. Hastings*, Cro. Eliz. 813; *The Six Carpenters' Case*, 1 Sm. L. C. 137.

(*y*) *Ladd v. Thomas*, *ubi supra*.

(*z*) *Johnson v. Upham*, 2 E. & E. 250; 29 L. J. Q. B. 252; 5 Jur. N. S. 681.

(*a*) *Bennett v. Bayes*, 5 H. & N. 391; 29 L. J. Ex. 224; 2 L. T. N. S. 156; 8 W. R. 320.

conditional (*b*) ; but a tender of the full amount under protest is good (*c*).

Seizure.

The bailiff, having entered upon the premises, and no tender having been made, should select such goods as are not privileged, and of a sufficient amount for the distress and expenses ; the test of value being the amount they would realize at a broker's sale (*d*). The usual mode of making the distress is for the bailiff, after demanding the rent and producing his authority, to take hold of some article of furniture or other personal chattel, and to seize it in the name of all the other goods there, or of such part only as he intends to seize (*e*) ; and that will be a seizure of all (*f*). No form of words is necessary, and there need not be an actual seizure in fact, if the circumstances show a constructive seizure ; as, where the landlord, seeing a piano being removed, refused to allow it to be taken away until his rent was paid (*g*). In like manner, where the landlord's agent walked round a wharf and left a notice in writing that he had distrained the goods lying there for rent, and that they would be appraised and sold, if not replevied, and then went away, leaving no one in possession, it was held that an actual seizure had been made (*h*). So, where a broker went and pressed for rent and expenses of the levy, but touched

(*b*) *Marquis of Hastings v. Thorley*, 8 C. & P. 573. As to growing crops, see *supra*, p. 14.

(*c*) *Manning v. Lunn*, 2 C. & K. 14.

(*d*) *Wells v. Moody*, 7 C. & P. 59.

(*e*) *E.g.*, he may say : " By virtue of an authority given me by A. B. for that purpose, I seize this table or chair (or whatever it may be) in the name of all the other goods on these premises, as a distress for the sum of —, rent due to A. B. at — last ;" Bull. 131.

(*f*) *Dodd v. Morgan*, 6 Mod. 215.

(*g*) *Cramer v. Mott*, L. R. 6 Q. B. 257 ; 39 L. J. Q. B. 172 ; *Wood v. Nunn*, 5 Bing. 10 ; 2 M. & P. 27.

(*h*) *Swann v. Earl of Falmouth*, 8 B. & C. 456.

nothing and did not make an inventory, and the tenant paid under protest and brought an action against the landlord for excessive distress, it was held that the landlord could not say that there had been no distress (i).

Formerly, by the common law, it was the duty of the distrainer to impound the goods off the premises; but now, by statute, he may impound them either off or on the premises, in such place, or on such part of the premises, as shall be convenient (j), and may appraise, sell and dispose of them upon the premises. Where the tenant has made a tender after the seizure, the question whether the goods have been impounded or not becomes very important and is often one of some nicety. It is sufficient here to say that, if the goods are not moved off the premises, then, in order that there may be a legal impounding, they should be placed together in one room, or more, if necessary (k), unless the tenant consents to a different course; and of this a very slight indication will suffice (l). Corn, loose or in the straw, hay &c. must not be removed from the premises, but must be impounded where found (m); and growing corn, crops &c. must, after they are cut or gathered, be impounded in a suitable place on the premises, and may only be removed, if there be none such (n). An open field is a sufficient pound for cattle (o).

After the seizure the bailiff should at once make an inventory of so much of the goods as is deemed sufficient to
Inventory
and notice.

(i) *Hutchins v. Scott*, 2 M. & W. 809; M. & H. 194.

(j) 11 Geo. II. c. 19, s. 10.

(k) *Woods v. Durrant*, 16 M. & W. 149.

(l) *Tennant v. Field*, 27 L. J. Q. B. 33.

(m) 2 W. & M. 1, sess. 1, c. 5. Cf. *supra*, p. 272.

(n) 11 Geo. II. c. 19; and see *supra*, p. 272.

(o) *Castleman v. Hicks*, Car. & M. 266. See also *Thomas v. Harries*, 1 Man. & G. 695.

satisfy the rent due and expenses of the distress (*p*), and give notice in writing (*q*) to the tenant of the distress having been taken, the amount due, the particular articles seized, the place, if any, to which they are removed (*r*) and the time after which the goods will be appraised and sold, unless the rent and charges be paid or the goods replevied (*s*); this is usually written at the foot of the inventory (*t*). A copy of the inventory and notice must be left at the chief mansion-house or other most notorious place on the premises, or, if possible, served personally on the tenant, in which case leaving it at the house may be dispensed with (*u*). It is advisable that a witness be present in all cases, to prove the regularity of the proceedings (*v*).

When sale
may be
made.

The landlord may not sell the goods distrained until after the expiration of five days from the date of seizure (*w*); and until the goods are actually sold the tenant may replevy them (*x*), or tender the rent and expenses; for, as has been already pointed out, the landlord may not sell after the full

(*p*) See Forms 4, 5, *post*, pp. 373, 374.

(*q*) *Wilson v. Nightingale*, 8 Q. B. 1034; 15 L. J. Q. B. 309; 10 Jur. 917.

(*r*) 11 Geo. II. c. 19, s. 9.

(*s*) *Kerby v. Harding*, 6 Exch. 234; 20 L. J. Ex. 163; 15 Jur. 953.

(*t*) See form, *post*, p. 373.

(*u*) 2 W. & M. 1, sess. 1, c. 5, s. 2; *Walter v. Rumbal*, 1 Ld. Rayn. 55; 1 Salk. 247.

(*v*) Woodf. 424.

(*w*) 2 W. & M. sess 1, c. 5, s. 2.

(*x*) *Jacob v. King*, 5 Taunt. 451; 1 Marsh. 535. Replevin, according to Woodfall, is a remedy for the owner of goods or cattle which have been wrongfully taken under a distress for rent, whereby he obtains them back in a summary manner, through the Registrar of the County Court of the district within which the goods or cattle were taken, upon giving security to try the validity of the distress or taking, in an action for replevin to be forthwith commenced by him against the distrainer and prosecuted with effect, and without delay, either in the County Court or in the High Court, and to return the goods or cattle, if such return shall be awarded; L. & T. 454.

rent and expenses have been tendered (*y*), after, in fact, the object of the distress has been attained. The days are five clear days, reckoned exclusively of the day of distress and that of the sale (*z*); at the expiration of that period the landlord must proceed to appraise, which he may do either on or off the premises (*a*), and sell. Immediately after the expiration of the five days limited by statute the goods ought in strictness to be either removed or sold, though a reasonable time will be allowed the landlord for the purpose of appraisement and sale (*b*); but if a forced removal or sale may depreciate the value of the effects, or the tenant wishes for delay to enable him to raise the rent, it is a common thing for him to make an arrangement with the landlord for an extension of the time, and to consent to the landlord's remaining over the five days. This consent should always be in writing (*c*). Appraisement.

Before sale the goods must be appraised by two persons (*d*), not necessarily professional appraisers, but reasonably competent (*e*); and they need not be sworn (*f*); and the bailiff distraining must not be one of them (*g*). But if the tenant, to save expense, requests that appraisers may not be called in, and, in consequence, the distraining broker values the goods, the tenant cannot afterwards treat this as an irregularity (*h*). By whom made

(*y*) *Johnson v. Upham*, 28 L. J. Q. B. 252; cf. *supra*, p. 273.

(*z*) *Robinson v. Waddington*, 13 Q. B. 753; 28 L. J. Q. B. 250.

(*a*) 11 Geo. II. c. 19, s. 10.

(*b*) *Pitt v. Shew*, 4 B. & Ald. 208; *Winterbourne v. Morgan*, 11 East, 395; 2 Camp. 117.

(*c*) See form, *post*, p. 375.

(*d*) 2 W. & M. sess. 1, c. 5, s. 2.

(*e*) *Allen v. Flicker*, 10 A. & E. 640; 4 P. & D. 735; 3 Jur. 1029; *Roden v. Eyton*, 6 C. B. 427; 18 L. J. C. P. 1; 12 Jur. 921.

(*f*) 35 & 36 Vict. c. 92, s. 13.

(*g*) *Lyon v. Weldon*, 2 Bing. 334; *Andrews v. Russell*, Bull. N. P. 81.

(*h*) *Bishop v. Bryant*, 6 C. & P. 484.

The appraisement is usually written under or upon the inventory (i).

Appraise-
ment
stamp.

By the Stamp Act, 1870, appraisements and valuations^s are liable to an *ad valorem* stamp (j).

Before any sale takes place, it is prudent to search at the sheriff's or county court registrar's office, to see if the goods have been replevied (k). If not, and if the rent and expenses are not tendered (l), the sale may be proceeded with.

How sale to
be made.

The statute requires that the goods should be sold at the best price that can be gotten for them ; and, to insure this, they should be sold by public auction ; and the landlord cannot buy the goods at the appraised value (m) ; though it seems that it is often the practice to allow the appraiser to do so (n) ; but this, it is thought, is a very improper, or, at the least, imprudent, proceeding.

Surplus
proceeds.

The surplus, if any, is directed by the statute to be left in the hands of the sheriff, under-sheriff or constable, for the owner's use ; and this means the overplus after payment of the rent and reasonable charges (o) ; and if the goods have been removed from the premises, and sufficient sold to satisfy the rent and expenses, the broker should leave the surplus money with the sheriff, and return the residue of the goods remaining unsold to the premises from which they were taken (p).

It seems that there is no rule as to the order in which

(i) See form, *post*, p. 375.

(j) 33 & 34 Vict. c. 97 ; cf. *ante*, Ch. III.

(k) Woodf. 437.

(l) See *supra*, p. 278.

(m) *King v. England*, 33 L. J. Q. B. 145.

(n) Woodf. 437.

(o) *Lyon v. Tomkies*, 1 M. & W. 603.

(p) *Evans v. Wright*, 2 H. & N. 527 ; 27 L. J. Ex. 56.

the goods are to be sold, as, that beasts of the plough should not be sold before other goods (*q*).

The expenses of a distress, when the rent distrained for does not exceed £20, are limited by statute (*r*) to the following charges :—

	<i>s.</i>	<i>d.</i>
Levying distress	3	0
Man in possession, per day.	2	6
Appraisement, whether by one broker or more, 6 <i>d.</i> in the pound on the value of the goods.		
Stamp, the lawful amount thereof.		
All expenses of advertisements, if any such	10	0
Catalogues, sale and commission, and delivery of goods, 1 <i>s.</i> in the pound on the net produce of the sale.		

If any charge in excess of these is made, the person distraining is liable to a penalty of treble the amount of the overcharge.

The statute does not apply to the case of a distress taken for more than £20, though made upon goods which are appraised at, and sold for, less than £20 (*s*). Every broker or other person distraining is required to give a copy, signed by him, of his charges, and of all the costs and charges of the distress, to the person or persons on whose goods the distress was levied, although the amount of rent demanded exceeded the sum of £20 (*t*). This rule does not apply where the goods have not been sold (*u*) ; nor is the landlord liable for the broker's neglecting to give the copy of his charges, unless he personally interferes in the distress (*v*).

If the rent demanded exceeds £20, there is no statutory limit, the charges must only be fair and reasonable (*w*).

(*q*) *Jenner v. Yolland*, 6 Price, 3.

(*r*) 57 Geo. III. c. 93.

(*s*) *Child v. Chamberlain*, 5 B. & Ad. 1049.

(*t*) S. 6.

(*u*) *Hills v. Street*, 5 Bing. 37.

(*v*) *Hart v. Leach*, 1 M. & W. 560.

(*w*) *Child v. Chamberlain*, *ubi supra*.

The general practice appears to be to charge 1s. in the pound for the levy and 2s. 6d. *per diem* for the man in possession, if the tenant keeps him, and 3s. 6d. *per diem*, if he keeps himself, besides usual charges for appraisement, advertisements, catalogues &c. (x).

IV. *Sales under the Pawnbrokers Act, 1872.*

Sale to
be by
auction.

Regula-
tions of
sale :

a. Pledges
to be ex-
posed.

b. Cata-
logues to
be pub-
lished.

By the Pawnbrokers Act, 1872 (a), save so far as, in the case of a pledge on which more than 40s. has been advanced, the terms of a special contract may otherwise provide (b), the sale of a pledge pawned for more than 10s. (c) and not more than £10 (d) must be by way of public auction, and not otherwise (e); and the following regulations are to be observed by the auctioneer with reference to the sale (f):—

1. The auctioneer must cause all pledges to be exposed to public view.

2. He must publish catalogues of the pledges, stating—

- a. the pawnbroker's name and place of business ;
- b. the month in which each pledge was pawned ; and
- c. the number of each pledge, as entered, at the time of pawning, in the pledge book.

3. The pledges of each pawnbroker in the catalogue must be separate from the pledges of every other pawnbroker.

(x) Woodf. 440.

(a) 35 & 36 Vict. c. 93.

(b) See ss. 10, 24.

(c) Pledges for 10s. or under, not redeemed in time, are forfeited ; s. 17. Pledges within the act are redeemable for a year, exclusive of the day of pawning, with seven days of grace ; s. 16 ; and if for above 10s., they continue redeemable until sale ; s. 18.

(d) The act does not apply to loans of above £10 ; s. 10.

(e) S. 19.

(f) *Ibid.* and 5th schedule.

4. The auctioneer must insert in some public newspaper an advertisement, giving notice of the sale, and stating—

c. Sale to be advertised.

- a.* the pawnbroker's name and place of business ; and
- b.* the months in which the pledges were pawned.

5. The advertisement must be inserted on two several days in the same newspaper, and the second advertisement must be inserted at least three clear days before the first day of sale.

6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical and philosophical instruments and china must be sold by themselves, and without any other goods being sold at the same sale, four times only in every year, viz., on the first Monday in the months of January, April, July and October, and on the following day and days, if the sale exceeds one day ; and at no other time.

d. Pictures &c. to be sold at special sales.

7. Where a pawnbroker bids at a sale (*g*), the auctioneer may not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale ; and the auctioneer, on knocking down an article to a pawnbroker, must forthwith audibly declare the name of the pawnbroker as purchaser.

e. Biddings by pawnbroker.

8. The auctioneer must within fourteen days after the sale deliver to the pawnbroker a copy of the catalogue, or of so much of it as relates to the particular pawnbroker's pledges, filled up with the amounts for which the several pledges, or those of the particular pawnbroker, were sold, and authenticated by the signature of the auctioneer.

f. Pawnbroker's copy of catalogue.

If an auctioneer does anything in contravention of those

Penalty for contravention.

(*g*) "A pawnbroker may bid for and purchase, at a sale by auction made, or purporting to be made, under this act, a pledge pawned with him ;" s. 19 ; but he may not, under any pretence, purchase, except at public auction, any pledge while in pawn with him ; s. 32.

provisions of the act which relate to auctioneers, or fails to do anything which the act requires him to do, he renders himself liable to a penalty not exceeding £10 (*h*).

V. *Sales under the Innkeepers Act, 1878.*

The inn-keeper's right to sell.

An innkeeper (*a*) may sell goods (*b*) left with him, or upon his premises, by public auction, to satisfy a debt for which he has a lien upon the goods, due to him from the person leaving the goods, for board or lodging, or for the keep and expenses of any horse or other animal left with him or standing at livery in a stable or field occupied by him (*c*).

When the sale may be made.

How it is to be advertised.

The sale may not be made until after the goods have been in charge of the innkeeper, or upon his premises, for the space of six weeks (*d*). It must be advertised, at least a month before it is held, in a London newspaper, and in a country newspaper circulating in the district where the goods, or some of them, were left; and the advertisement must shortly describe the goods to be sold, and give the name of the owner or person who left them, if known (*e*).

VI. *Sales under the Summary Jurisdiction Act, 1879.*

S. J. A. 1879.

The statute 42 & 43 Vict. c. 49 (*a*), enjoins the observance of the following regulations in the execution of warrants of distress issued by courts of summary jurisdiction:

(*h*) Ss. 20, 45.

(*a*) *I.e.*, the landlord, proprietor, keeper or manager of any hotel, inn or licensed public-house.

(*b*) Chattels, carriages, horses, wares or merchandise.

(*c*) 41 & 42 Vict. c. 48, s. 1.

(*d*) *Ibid.*

(*e*) *Ibid.*

(*a*) The Summary Jurisdiction Act, 1879, s. 43.

1. A warrant must be executed by or under the direction of a constable.

2. The distress must be sold by public auction, and five clear days at the least must intervene between the making of the distress and the sale; unless the person against whom the distress is levied consents otherwise in writing.

By whom
distress
warrant
to be
executed.
How and
when sale
to be
held.

3. Subject as above, the distress must be sold within the period fixed by the warrant, or, if the warrant fixes no period, then within fourteen days from the date of the distress being made; unless the sum for which the warrant was issued and also the charges of taking and keeping the distress are sooner paid.

4. Subject to any directions to the contrary given by the warrant, where the distress is levied on household goods, the goods may not, except with the written consent of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods as, in the opinion of the person executing the warrant, will be sufficient to satisfy the distress must be impounded by affixing to the different articles a conspicuous mark. A person removing marked goods, or defacing or removing the mark, is liable to a fine not exceeding £5.

Impound-
ing goods
until sale.

5. Where a person charged with the execution of a warrant wilfully retains from the produce of goods sold to satisfy the distress, or otherwise exacts, any other costs and charges than those to which he is for the time being entitled by law (*b*), or makes any improper charge, he is liable to a fine not exceeding £5.

Penalty for
overcharge.

6. A written account of the costs and charges incurred in

Account of
charges.

(*b*) None of the statutes relating to the summary jurisdiction of magistrates appears to contain a scale of charges for executing a warrant of distress. The amounts usually allowed are the same as those authorized by 57 Geo. III. c. 93; see *post*, p. 365, Form 5.

respect of the execution of a warrant must be sent by the constable charged with the execution of the warrant, as soon as practicable, to the clerk of the court issuing the warrant ; and the person upon whose goods the distress was levied has a right within a month after the levy to inspect the account, without fee or reward, at any reasonable time to be appointed by the court, and to take a copy of it.

Deduction
of charges. 7. A constable charged with the execution of a warrant must cause the distress to be sold ; he may deduct out of the amount realized all costs and charges actually incurred in effecting the sale ; and he must render to the owner the surplus, if any, after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

When
distress to
be dis-
continued. 8. Where a person pays or tenders to the constable charged with the execution of a warrant the sum mentioned in the warrant, or produces the receipt for it of the clerk of the court, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender, the constable may no longer execute the warrant.

PART II.

FORMS AND PRECEDENTS.

I. AUCTIONEER'S LICENCE.

I, _____, of _____, in the parish of _____, in the county of _____, request a licence to carry on the business of an auctioneer. Applica-
tion for
Dated _____, 18 ____.

[Signature of applicant.]

To the Collector of Inland Revenue,
[York] Collection.

2.
Auctioneer's Licence.

Licence.

8 & 9 Vict. c. 15.

No. _____

[York] Collection.

I, the undersigned, duly authorized by the commissioners of inland revenue, hereby grant licence to _____, residing at _____, in the parish of _____, in the county of _____, to exercise the trade or business of an auctioneer in any part of the United Kingdom from the day of the date hereof until and including the 5th day of July next ensuing, he having paid the sum of £10 for this licence.

Dated this _____ day of _____, 18 ____.

[Signature]

Collector of Inland Revenue.

N.B. This licence will not authorize the sale of any commodities for the selling of which an excise licence is required, except in the

cases following: 1st) sales upon premises in respect of which the owner of the commodities has taken out a proper licence; 2ndly) sales by sample only at a place in the town in which the owner of the commodities is licensed; 3rdly) sales of commodities the property of a private person and not sold for profit or by way of trade, under the permission of the commissioners of inland revenue, for which application should be made through the supervisor at least a week before the intended sale.

3.

Notice of
intention
to renew
licence.

I hereby give notice that I intend to renew my auctioneer's licence, which will expire on the 5th of July next.

Dated , 18 .

[Signature of auctioneer.]

To the Collector of Inland Revenue,
[York] Collection.

4.

Warrant of
commit-
ment for
selling
without a
licence.

[County] } To the constable of , and to the keeper of the
to wit. } house of correction (a) at , in the said county
of .

Whereas A. B., of , in the county of , is and stands convicted this day, before me, N. O., one of Her Majesty's justices of the peace in and for the said county of , for that the said A. B. was, at the time of committing the offence hereinafter mentioned, a person acting as an auctioneer and required by an act of parliament, passed in the eighth year of Her Majesty's reign, intituled "An act to repeal the duties of excise on sales by auction, and to impose a new duty on the licence to be taken out by all auctioneers in the United Kingdom," to take out a licence as a person exercising or carrying on the trade or business of an auctioneer; and that the said A. B. did, on this day of , at , within the county aforesaid, act as an auctioneer and hold a certain sale by auction, to wit, a sale by auction of certain goods and chattels, and did then and there sell by auction certain goods and chattels, to wit, ; and that a certain officer of excise [or customs or stamps and taxes], to wit, one C. D., did then and there, at the time of the said sale by auction as aforesaid, demand of the said A. B. that he the said A. B.

(a) Or gaol, or whatever the description of the prison for the county or place where the sale was held may be. See 28 & 29 Vict. c. 126, ss. 56, 61.

should produce and show to him, the said officer of excise [or customs or stamps and taxes], a proper licence to him the said A. B. granted under the said act and then in force, but the said A. B. did not nor would, at the time of the said sale, produce and show to the said C. D., as such officer as aforesaid, any such licence as aforesaid, neither did he, the said A. B., then and there immediately deposit with the said C. D., as such officer as aforesaid, the sum of £10, but then and there absolutely neglected and refused, as well to produce such licence as to deposit such sum of money as aforesaid, contrary to the form of the statute in that case made and provided; whereupon the said A. B. was then and there arrested and detained by a certain officer of the peace, to wit, E. F., constable of the police of the county of _____ aforesaid, at the request of the said C. D., as such officer as aforesaid, and in manner mentioned and required by the said act of parliament, and conveyed before me, one of the justices of the peace of the county where such sale was held; and I, the said justice, then and there, to wit, at _____, in the county aforesaid, on the day and year aforesaid, examined into the fact and facts charged, and it was then and there duly proved by the oath of J. H., a credible witness, that the said A. B. did act as an auctioneer at the time and place and in manner aforesaid, and did not produce such licence or deposit such sum of money as aforesaid, contrary to the form of the statute in that case made and provided: therefore, I the said justice do commit the said A. B. to the *house of correction* (b) for the county where the said sale was held as aforesaid, that is to say, the *house of correction* (b) at _____, in the said county, for the space of _____ (c) from the day of this commitment. And these are to require you the said _____ to convey the said A. B. to the *house of correction* (b) aforesaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the said keeper to receive the said A. B. into your custody in the said *house of correction* (b), there to remain for the space of _____ (c) from the day of this commitment. And for so doing this shall be your sufficient warrant.

Given under my hand at _____, in the said county of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

[Signature of justice of the peace.]

A justice of the peace for the said county of _____.

(b) Or as the case may be.

(c) Not more than a calendar month.

II. AUTHORITY TO SELL.

Authority
to sell
goods by
auction.

1.

SIR,—I hereby give you authority to sell for me by auction the several lots, my property, herein mentioned [at the prices marked against them], and to receive the price [or a deposit not exceeding *per cent.* on the price].

Dated the _____, 18 ____.

J. T.

To Mr. G. H., Auctioneer.

Authority
to sell an
estate in
lots.

2.

Authority to sell property at _____.

_____, 18 ____.

To Messrs. R. M. & R., Piccadilly.

I hereby authorize you to sell the property described in the printed particulars, of which copy annexed, at the undermentioned prices, either by public auction, or subsequently by private contract, until I withdraw these instructions by writing.

Lot 1	Lot 4	
Lot 2	Lot 5	
Lot 3	Lot 6	

[Address.] _____

[Signature.]

Power of
attorney to
sell an
estate.

3.

TO ALL TO WHOM these presents shall come, KNOW YE that I., A. B., of R., in the county of Y., gentleman, for sufficient considerations me hereunto moving, by these presents Do make, constitute and appoint C. D., of S., in the county of Y., auctioneer, my true and lawful attorney, for me and in my name, place and stead to make sale and dispose of ALL that messuage &c. [*Describe the premises shortly*], with the appurtenances and the inheritance thereof in fee simple [either] by public auction, [or by private contract, and] either

together or in separate parcels or lots, for such price or prices, or sum or sums of money, and by such descriptions and under such conditions as to him shall seem advisable ; and to sign and execute all proper contracts and agreements for the sale and conveyance thereof, and do all such acts, matters and things as he shall consider necessary for completing such sale and contracts ; and to receive a deposit not exceeding per cent. on the purchase-money ; I, the said A. B., hereby giving my said attorney the whole of my power and authority in the premises, and hereby allowing, ratifying and confirming, and promising and agreeing at all times to allow, ratify and confirm, all and whatsoever my said attorney shall lawfully do or cause to be done in or concerning the premises. IN WITNESS whereof I have hereunto set my hand and seal this day of , 18 .

Signed, sealed, &c.

A. B. (L. S.)

4.

[Date.]

SIR,—As the premises in S. are to be submitted to auction on the next, I enclose you the usual form of appointment of a person to make the reserved bidding (*d*), and request that it may be signed by the parties and returned to me previously to the day of sale. I also enclose for your inspection and sanction a copy of the particulars and conditions of sale.

Letter to vendor for instructions for conducting sale.

Be so good as to favour me with the lowest price at which the property may be sold, and such other directions or information as you may deem needful.

I am, Sir,

Your obedient servant,

C. D.

To A. B., Esq.

APPRAISEMENTS.

[See rules, *post*, p. 444 *et seq.*]

(*d*) See Form, *post*, p. 342.

III. ADVERTISEMENTS.

A. SALES BY AUCTION.

Freehold, under order of the Court. High Court of Justice. Chancery Division. *Thompson v. Johnson*, 1882. T. No. . Freehold residence near . With possession.

1.

Messrs. . will, pursuant to an order in the above action, and with the approbation of Mr. Justice ., sell by auction at the Mart, Tokenhouse Yard, E.C. on the . of 18 ., at . o'clock precisely, the excellent freehold nine-roomed house known as ., and situate . There is a green-house, and also a garden stocked with productive fruit trees. Particulars and conditions may be had at the Mart; of Messrs. ., solicitors, Mortlake; and of the auctioneers at their offices, No. ., Mincing-lane, E.C.

Leaseholds, by order of mortgagees. Woking, Surrey. Detached and semi-detached leasehold residences, for occupation or investment. By order of the mortgagees.

2.

Mr. . will sell by auction at ., on ., the of ., at . o'clock, three substantially built detached and semi-detached residences, known as ., in the Road, Sydenham, one of the most beautiful and healthy suburbs of London, and close to the Crystal Palace, with excellent train service to the City and West-end of London; held for long terms and low ground-rents, and together of the estimated, and in part actual, rental value of £ . per annum. In the meantime the auctioneer is prepared to receive offers for their purchase by private contract. May be viewed by permission of the tenants, and particulars had, &c.

Furniture.

3.

Mr. . will sell by auction at No. 10, . Street, South Kensington, on the . of ., 18 ., at . o'clock, 270 lots of furniture and effects. By order of Mrs. ., leaving for India. View, day preceding and morning of sale. Catalogues at offices, No. ., Broad-street, E.C.

4.

Bickerton Park Estate.—Messrs. beg to announce that lots 7 and 8 of this property, having been disposed of by private treaty, are withdrawn from their sale by auction announced to take place on the instant.

Announce-
ment of
withdrawal
of lots.

B. LETTING BY AUCTION.

Notice is hereby given that the tolls arising at the toll-gate upon Tolls. the turnpike-road at , called or known by the name of the Gate, will be let by auction to the best bidder at the house of at , on the day of next, between the hours of and , in the manner directed by the Act passed in the third year of the reign of His Majesty King George the Fourth "for regulating turnpike-roads," which tolls produced the last year the sum of £ above the expenses of collecting them, and will be put up at the sum of £ . Whoever happens to be the best bidder must at the same time pay one month in advance, if required, of the rent at which such tolls may be let, and give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for payment of the rest of the money monthly [or in such other proportion as shall be directed].

A. B. { Clerk to the trustees of the said
turnpike-road.

IV. PARTICULARS AND CATALOGUES.

A. INTRODUCTORY.

1.

By order of the mortgagees. City of London. The particulars Business and conditions of sale of the capital business premises, No. , Street, , comprising five floors and a basement, and producing, inclusively of the estimated value of two vacant rooms on the third floor, £ per annum; held by original lease direct from the estates, for the residue of a term of years from [Christmas] (years unexpired) at a ground rent of £ per annum; for sale by auction, by Messrs. , at , on , at o'clock precisely. Particulars and conditions of sale may be obtained of Mr. , solicitor, ; and of the auctioneers at .

Freehold
farm and
leasehold
cottages, in
two lots, by
order of
the Court.

2.

In the High Court of Justice,
Chancery Division (*d*).

Particulars and conditions of sale of certain freehold and leasehold estates situate in the parish of , in the county of ; comprising a freehold farm called the " Farm," containing about 180 acres of arable, pasture and meadow land; and leasehold cottages in Lane, adjoining the said farm, held for an unexpired term of about years, at a nominal rent; which will be sold by auction by Mr. , with the approbation of his lordship, Mr. Justice , the judge to whom the action (*e*) is attached, pursuant to the judgment (*f*) therein dated the day of 18 , at the Hotel, at , in the city of , on the day of 18 , at 5 o'clock in the evening, in two lots.

Particulars and conditions of sale may be had gratis of Mr. of , in the city of , solicitor; of Messrs. , of ; of the auctioneer, at ; and at the place of sale.

Houses, by
direction
of the
sheriff.

3.

In the High Court of Justice,
Queen's Bench Division.

Between Robertson and Co., Plaintiffs,
and
Richard Jamieson, Defendant.

Particulars and conditions of sale of the chattel interest, if any, of the above-named defendant in certain buildings situate and being Nos. and Road, South Kensington, which will be sold by auction by Messrs. , at their auction offices, High Holborn, on Friday, the day of March, 18 , at 12 for 1 o'clock, by direction of the sheriff of Middlesex. The premises may be viewed. Particulars and conditions of sale may be had on the premises; of Messrs. and , solicitors, Old Broad Street, E.C.; and at the auction and estate offices, High Holborn.

4.

Furniture.

No. , Street, W. (instead of No. , Place, Kensington, a sale not being allowed at the mansion). A catalogue

(*d*) Add the short title of the action or matter, and a reference to the record.

(*e*) Or matter.

(*f*) Or order.

of the superior modern furniture (chiefly supplied by Messrs. & Co.) and general effects, comprising the contents of 10 bedchambers, elegant ebonized and gilt drawing-room suite, upholstered in rich blue satin, a fine concert grand pianoforte by Collard and Collard, a full-compass cottage pianoforte, ebony, amboyna and gilt cabinets, ebony, amboyna, oak, walnut, mahogany and gilt centre, card, writing and occasional tables, a gilt and enamelled boudoir suite, ottomans, jardinières, pedestals, set of handsome massive oak dining-tables, beautifully carved oak pedestal sideboard and bookcase, dinner waggon, couch, 2 easy and 18 other chairs in morocco, oak and other bookcases, the hall furniture, couches, chairs, fire screens, étagères, girandoles, elegant crystal and gilt chandeliers, valuable mantel clocks and ornaments, bronzes, oil paintings, including an example by Landseer, engravings, plated articles, 300 ozs. silver plate, 600 vols. of books, silk, damask, lace and other curtains, chimney glasses, pile, Turkey and Brussels carpets, hearthrugs, fenders, fire implements, china, glass, refrigerator, coppers, culinary requisites, excellent landau and phaeton, by & Sons, a single brougham, and numerous other effects, which will be sold by auction, by Messrs.

(by order of Mr.), at the Sale Rooms, , Street, on Wednesday, May, 18 , and following day, at eleven for twelve o'clock each day. May be viewed at the mansion, No. , Queen's Gate Place, privately, on Saturday, 1 May, by cards, to be obtained of the auctioneers; and publicly, on Monday, 3 May, also at , Street, on Tuesday, 11 May. Catalogues at the place of sale; of Messrs. solicitors, No. , Street; and of the auctioneers at .

5.

Horses.

To be sold by auction by Messrs. at , on the of , 18 , beginning at 11 o'clock precisely, in accordance with the conditions exhibited on the premises.

6.

Cows and heifers.

Catalogue of a choice herd of newly calved and down calving Alderney and Guernsey cows and heifers, selected with great care by Mr. of , importer to Her Majesty the Queen, to be sold by auction by Mr. at the Hotel, on the of , 18 , at 12 o'clock punctually. The herd will be on view on the morning of the sale.

7.

Stocks and shares.

Particulars and conditions of sale of various stocks and shares in established undertakings, for sale by auction at , by Messrs.

18, at _____, of _____, auctioneers, on _____, the _____ of _____, o'clock precisely. Catalogues can be obtained of the auctioneers.

B. FORMAL (g).

1.

Freehold
house and
garden.

A messuage or tenement, with the garden, yard and outbuildings, situate in, and being, No. 10, of _____ Street, in the town of _____, in the county of _____, and now in the occupation of _____, as tenant from year to year from [Michaelmas], at a rent of £ _____ per annum.

2.

Freehold or
copyhold
house and
garden.

A dwelling-house, with coach-house, stable, outbuildings and garden, being No. _____, in _____ Street, _____, now in the occupation of _____ [State period of tenancy, &c., rent, also as to repairs, &c.]

The premises contain, including the site of the house and buildings, _____ of land, or thereabouts, and are bounded by _____, and are shown on the accompanying plan.

The walls adjoining _____ belong solely to these premises. The walls adjoining _____ are to be deemed party walls.

The premises have a joint right, with the premises on the north side thereof, to the use of the well and pump shown on the plan, subject to bearing half the expense of keeping the same in repair; and the like as to the road or passage-way leading to the stable and coach-house and back of the premises.

The annual land tax now payable is _____.

The property is freehold (h).

3.

Freehold
farm and
leasehold
cottages, in
two lots.

Lot 1. A freehold farm, called "_____ Farm," situate at _____, in the parish of _____, in the county of _____; consisting of 180 acres of arable, meadow and pasture land in a high state of cultivation, and a large and commodious farm-house, brick built and tiled, containing ten rooms, with large barn, cart-sheds, stables and other outbuildings. This lot is in the occupation of Mr. _____, under an

(g) Simple particulars are given, the laudatory terms generally suggesting themselves to auctioneers.

(h) Or copyhold of the _____ manor of _____; the usual fines on death or alienation, a heriot on death, and a yearly quit-rent of _____.

agreement which expires at [Michaelmas] next, at the annual rent of £ . The farm is subdivided as follows :—

No. on Plan annexed.	Description.	State.	Quantity.
140	House and Homestead	...	2
141	Home Close	Meadow	4
143	Long Ten Acres ...	Arable	10
(Set out the rest of the parcels in like manner.)		Total ...	180

Lot 1 will be sold subject to a right of way reserved to the owner of the adjoining lands, and his servants and others, across the Long Ten Acres, by a footpath running from west to east.

Lot. 2. Four leasehold cottages, each containing four rooms and a closet, and a small garden to each cottage, all situate in , adjoining the Long Ten Acres.

Lot 2 is held under a lease for a term of eighty years from Ladyday, 18 , at a ground rent of £ , and is now in the several occupations of , as weekly tenants, at rentals amounting to £ per annum.

4.

The messuage, bakehouse, and premises situate at aforesaid, and now in the occupation of J. C. ; and also the water grist-mill, mill-house and premises situate in the parish of C., in the county of S., with the appurtenances, as the same are now in the occupation of the said J. C. [*State terms of tenancy, and give inventory of going gear, &c., of mill*].

Freehold
house,
bakehouse,
and mill.

5.

The several freehold pieces or parcels of land or ground situate at S., in the county of Y. [delineated in the plan in the margin hereof, or], containing by estimation acres, more or less, called or known by the several names of , and now in the occupation of .

A freehold
estate.

The property is subject to a fee-farm rent, payable to the lord of the manor of , [or to a mortgage in fee (or by demise for a

term of years), by indenture dated , and made between and , for securing the payment of a principal sum of £ and interest, which principal sum of £ , with interest thereon from , is to be paid and discharged by the purchaser].

Moiety of
freehold.

6.

All that undivided moiety or half part of , of and in all, &c. (as above).

Leasehold
for lives.

7.

The estate of the said [*vendor*] for the lives of [*nominees, stating their ages and addresses*], granted and demised by indenture bearing date on or about the day of , 18 , and made between [*lessor*] of, &c., of the one part, and the said [*vendor*] of the other part, in all that [*messuage or tenement, garden, and piece of meadow land*] situate at, &c.

Life interest in a
freehold
house.

8.

The life interest of the bankrupt, aged , in a freehold messuage, &c., situate, &c., in the occupation of , under an agreement for a lease, &c. The bankrupt's interest in these premises is derived under the will of his father, , deceased, dated, &c., whereby the fee simple of the said premises was devised to certain trustees, upon trust, among other things, to pay the rents and profits of the said premises to the said during his life.

Reversion
in free-
holds.

9.

The remainder or reversion of A. B. [in fee simple] expectant upon and to take effect in possession immediately after the decease of C. D. of and in all, &c.

A copyhold
estate.

10.

The inheritance in possession [*or otherwise, as the case may be*], according to the custom of the manor of E., in the county of S., of and in all those several closes of arable land, situate at , containing by estimation acres, more or less, and now in the occupation of , [*State the terms of the tenancy as to period, rent, &c.*]

11.

Manor with
right of
fishery and
advowson.

The manor or lordship of E., with its rights, members and appurtenances, situate and being in the county of S., and also the advowson, right of patronage and presentation of and to the vicarage of E. aforesaid, and also the right of fishery in the river T., of and belonging to the said [vendor], and also all and singular the messuages, farms, lands, tenements and hereditaments mentioned or described in the particulars or schedule hereunder written [*State fines, arbitrary and certain, quit rents, free rents, reliefs, annual income of advowson, and anything tending to show that the fishery is of substantial value*].

12.

A manor.

The manor of , in the county of , with its rights, members and appurtenances.

The manor comprises houses and acres of land, with pieces of land without extent defined, held at fines arbitrary on death or alienation and quit rents [of the parts copyhold of the manor are also subject to heriots payable on death. There are also various free rents payable to the lord of the manor].

The average income from the manor for the last years [not including income from property which has been enfranchised] has been £ , and the assessment to the poor's rate of the properties held of the manor at fines arbitrary appears by the statement which will be shown to intending bidders to be £ .

The annual income from the stewardship may be fairly estimated at not less than £ .

13.

A freehold
and copy-
hold estate.

The estate called &c., situate at &c., comprising residence with appropriate coach-houses, stabling, vinery, conservatories and out-buildings, walled-in garden, ornamental plantations, lawn and grounds, and the farms called &c., the whole containing by tithe survey acres, roods and perches.

The residence comprises &c. [*State number and size of rooms, &c.*]

The coach-house and stable accommodation is sufficient for horses and carriages.

The vinery and conservatories contain [*State dimensions and particulars*].

The plantations, lawns and grounds, with the garden and site of residence and buildings, comprise of land by the tithe survey.

This part of the property is in the occupation of [vendor], and possession will be given on the completion of the purchase.

The farm is situate at &c., and comprises a farm-house with requisite outbuildings and the quantities of land following [*State names of parcels and quantity of land in each, and total*].

This farm is now in the occupation of [on a lease for years from] at the yearly rent of £ .

[Add similar description of other farms.]

The whole of the foregoing property, with the exception of &c., is freehold, the remainder being copyhold as under and subject to fines arbitrary on death or alienation [to a heriot payable to the manor of] and to the annual quit rents stated below.

[Add statement of the parts copyhold and the quit rents.]

Attached to the property are rights of common &c. [State particulars], a right of fishery &c., and a right of way over &c.

The property is subject to land tax, now £ per annum [in respect of &c., the land tax in respect of &c. having been redeemed].

The tithe rent charges in respect of the several parts of the property are as under [State them].

As regards the parts in the occupation of tenants the tithe rent charges are payable by the tenants.

The property is sold subject to a right of way to the owners and occupiers of &c. over &c. ; also to the right of the tenant of the farm called &c. to remove the granary situate &c., unless purchased under the provisions of the Landlord and Tenant Act.

The covenants in the leases of the farms may be seen on application at the office of Messrs. , at , solicitors, prior to the day of sale, or in the auction-room on the day of sale.

[If any free rents or rent charges under wills &c. payable, they should be stated, and it would be proper also to state any drainage or level rate.]

A map of the estate will be found attached to these particulars.

14.

A leasehold estate.

A messuage [or whatever the property may be] &c.

The premises are held for the residue now to come of a term of years, commencing from the day of , 18 , granted to the said [vendor] by an indenture of lease bearing date the day of , and made between [State the parties], under and subject to the rents, covenants and agreements therein contained on the part of the tenant or lessee thereof to be respectively paid and performed.

15.

A rent reserved upon a lease for a term.

The yearly rent or annual sum of £ , reserved and payable to the said [vendor], his heirs and assigns, for the term of years in and by a certain indenture of lease bearing date the day of , and made between .

16.

An improved rent of £20, derived from two messuages &c., held by the vendor for a term of years from , at a ground-rent of £10, and underleased by him for the full term, wanting three days, at the rent of £30, being an advance or profit of £20 *per annum* on the original rent.

An im-

proved
ground-

rent.

17.

The perpetual yearly rent charge or annual sum of £ issuing and payable out of and charged and chargeable upon certain lands, tenements and hereditaments situate at D., in the county of K., under or by virtue of a certain indenture of grant bearing date the day of , and made between [*State the parties*].

A rent

charge in
fee.

18.

The yearly rent charge or annual sum of £ issuing out of and chargeable upon certain lands, tenements and hereditaments situate at D., in the county of K., and payable to the said [*vendor*] for and during the term of his natural life under or by virtue of a certain indenture of settlement bearing date the day of , and made between &c.

A rent

charge for
a life.

19.

The tithes of corn, grain and hay, and other great or arising, renewing or increasing within the parish of , in the county of , with the appurtenances, belonging to the rectory impropriate of .

Rectorial

or great
tithes.

20.

The tithes, tenths, dues and duties which are paid and usually reckoned as small and vicarial tithes, which shall arise or grow due within the parish of , in the county of .

Vicarial or

small
tithes.

21.

The advowson, donation, or perpetual right of patronage and presentation of, in and to the rectory or parish and parish church of , in the county of , and all the glebe lands, &c.

An advow-

son.

Another
form.

22.

The advowson, right of patronage and presentation to the rectory [or vicarage or perpetual curacy] of _____, in the county of _____, with the great and small tithes [as the case may be], glebe and income, from fees.

There is an excellent parsonage house, comprising &c. [*Describe buildings and grounds*].

The glebe contains &c.

The tithes have been commuted at &c. The glebe is let to &c. [*State name of tenant and period and conditions of tenancy*] at the rent of £ _____ payable [half-yearly].

The entire income from tithe rent charge, rent of glebe, and fees amounted in the last year to £ _____.

The present incumbent was of the age of _____ last birthday.

A next pre-
sentation.

23.

All that the first and next turn or right of donation, nomination, presentation and free disposition of and to the rectory and parish church of _____, in the county of _____, whenever the same shall first and next after the date hereof become void by the death of _____, the present incumbent thereof, or by any other ways and means whatsoever [*State age of incumbent and details of annual value*].

Presenta-
tion for life
of vendor
or for a
term.

24.

The right of donation, nomination, presentation and free disposition of and to the advowson, rectory, parsonage or parish church of M., in the county of W., when and so often as the said church shall become void by the death, resignation or deprivation of the present or any future incumbent thereof in the lifetime of the said [vendor] [or during the term of 20 years from the date hereof] [*Add statements as to age and value*].

Growing
timber.

25.

[500] oak trees and [300] elm trees, marked with _____, and now standing in or upon the farm and land [woods and grounds] hereinafter mentioned, that is to say :

26.

Imported
goods.

40 bags Ceylon coffee.

Prompt, 1 November, 18 . Discount 1 per cent.

Per New Express, Hewitt @ Ceylon.

Reported 29 July, 18 .

Lying at West India Docks.

Mark.	Pile.	Sale lot.	Dock lot.	Bags.
V. & Co. }	21	1	54	20
126 lbs. }		2	55	20
B. O. }				

15 bags Ceylon cardamoms.

Prompt 3 months, deposit £15 per cent, no discount ; or 14 days' discount, 2½ per cent. Such option to be declared within three days of the sale.

27.

A ship.

The ship or vessel, called the , built of , in 18 , of the burthen of tons, now lying at , whereof is master, with the furniture, stores, materials and appendages thereto belonging.

The hull, masts, yards, standing and running rigging, with all faults as they now are.

Inventory.

[List of anchors, cables, sails, boatswain's stores, gunner's stores, cooper's stores, armourer's stores, ship-steward's stores, cook's stores, surgeon's stores, kentledges, boats, &c.]

28.

Engrav-
ings.

- Lot 1. View of Scarborough, by Suntach, scarce.
- Lot 2. Etchings by J. T. Walker, A.R.A., on Japanese paper.
- Lot 3. Death of Lord Manners, by Sherwin, proof.
- Lot 4. The Spanish Festival, proof before letters.
- Lot 5. C. Mellan, St. Peter Nolasque, extremely rare, the plate lost in a shipwreck.
- Lot 6. The Lass with a delicate air ; and Sally's Disaster.
- Lot 7. Elstracke : Robert Devereux, Earl of Essex, very fine and rare.
- Lot 8. A. Dürer : Portrait of the Emperor Maximilian, a large woodcut, rare.

Horses.

29.

1. Dollie, a black pony; quiet to ride and drive, and used to children.
2. A bay mare; has been ridden and driven in harness.
3. The property of Mr. . Captain, a roan gelding; a good hunter, ran second at Aldershot this spring.
4. Ruby, a chestnut mare, by Hotshot; quiet in single and double harness, and constantly ridden and driven by a lady.
5. A brown gelding; fast.
6. Chepstow, a bay horse, three years old, by Speculum, out of Odine (dam of Turley), by Fitz-gladiator.
7. A bay filly foal, by Thunderbolt, out of Inverness; foaled 20th April.
8. A roan gelding; a good hunter and hack, up to 14 stone, well known with the Tickham foxhounds.
9. A brown cob; quiet in harness and a good boy's hunter.

Cows and
heifers.

30.

Alderneys or Jerseys.

Lot.	Age.	Supposed time of calving.	Colour.	Remarks.
1.	Two years old.	Time up.	Pure silver fawn.	A pedigree heifer.
2.	Two years old.	Oct. 28.	Grey fawn.	Very choice.
3.	Two years old.	Particulars at time of sale. Guernseys.		
4.	Two years old.	Time up.	Mulberry.	Very hardy and rich.
5.	Two years old.	Oct. 27.	Lemon and white.	A large rich heifer.
6.		Particulars at time of sale.		

Shares in a
company.

31.

London and Westminster Supply Association (Limited). Established in 1876 to carry on the business of a co-operative store. Capital £200,000, in 20,000 £5 preference and 100,000 £1 ordinary shares. The preference shareholders are entitled to 6 *per cent. per annum* and also to three-tenths of the next profits.

Lot 1. Fifty fully-paid £5 preference shares.

Lot 2. Fifty £5 preference shares, £2 paid.

32.

Policy of insurance.

A policy of insurance for the sum of £ , No. , dated , effected with the Insurance Company on the life of [rendor], who is now in the year of his age. Annual premium £ [State any bonus added to policy].

33.

Reversionary interest in personal property.

One moiety of the sum of £3,500 3 per cent. Consolidated Bank Annuities, standing in the names of two trustees, and payable absolutely to the vendor on the death of a lady now in the sixty-third year of her age (i).

34.

Another form.

The interest of Mr. J. G., as one of the six children of W. G., late of , in the county of , Esquire, deceased, of and in the moneys to arise from the sale of his real and general residuary personal property.

The said W. G., by his will bearing date the , 18 , gave, devised and bequeathed unto his trustees and executors all and singular his real and personal estate whatsoever and wheresoever upon trust to permit his wife, S. G., to have the entire use for her life, and after the decease of his said wife to sell and convert the same into money, and after payment of all expenses to pay the same unto and amongst his sons, the said J. G., W. G. and H. G., and his daughters, M. A. W., A. M. S. and S. D., in equal proportions, share and share alike. The testator's real estate consists of the following property, &c.

35.

Contingent reversionary interest (k).

A contingent reversionary interest in one seventh part or share of the sum of £ 3¼ per cent. Reduced Annuities, to which the

(i) In the contract the names of the [testator] and trustees, or the particulars of the deed under which the property is vested, should be given.

(k) The point principally to be attended to in preparing particulars and conditions of sale of property of the nature above mentioned is that the interest offered for sale be accurately described. There is little difficulty in the case of a simple policy of assurance on a life, or a life interest in possession, or an absolute vested reversion; but it is an operation of the greatest nicety and difficulty to frame a description which may be comprised within the ordinary limits of a particular, and shall at the same time accurately and clearly define an interest contingent or presumptive and liable to varia-

purchaser will become entitled on the death of a gentleman aged ,
provided the vendor, aged , shall be then living.

V. CONDITIONS.

A. CONDITIONS OF SALE OF REAL ESTATE (a).

I.

A FREEHOLD OR COPYHOLD ESTATE IN ONE LOT.

- Biddings. 1. No person shall advance less than £ at a bidding (b) ; and no bidding shall be retracted.
2. The vendor reserves the right to bid (c).
3. The highest bidder shall be the purchaser (d) ; and if any dispute shall arise respecting a bidding, the property shall be put up again at the last undisputed bidding, or the auctioneer may deal with the dispute as he shall think fit (e).
- Deposit 4. Immediately after the fall of the hammer the purchaser shall

tion on many different events. The task is, in fact, that of attempting to state in a few words the effect of long and complicated clauses, and frequently, as might be expected, is unsuccessful. The safest way in such cases is to state generally the nature of the interest, and to produce before or at the sale a copy of the instrument under which the interest is held, so as to give a purchaser notice of the contents. See 1 Dav. 547.

Caution. (a) The auctioneer must regard the precedents and forms of conditions of sale of real estate which are given below as examples, not as models ; see the observations on p. 84, *ante*. Every variety of such conditions, common or special, will be found in the well-known works of Messrs. Davidson, Key and Elphinstone, Prideaux and Wolstenholme and Turner.

(b) Or "shall advance at a bidding less than the sum fixed by the auctioneer at the time of the sale."

(c) Or "One person will bid at the sale on behalf of the vendor."

(d) In Scotland the regulations respecting the biddings are usually expressed thus: "The said tenement shall be exposed to sale by public roup during the space of half an hour at the sum of £ ; and the person offering the upset price, or, in case of more offers than one, the highest offerer, at the expiry of the said half hour, shall be preferred to the purchase."

Timber, &c. (e) If there be any timber, fixtures or growing crops &c. to be taken at a valuation and paid for in addition to the purchase-money, a condition to that effect should follow next. See forms, *post*, pp. 319—321.

pay to the auctioneer (*f*) a deposit of £ per cent. upon the and contract.
amount of the purchase-money (*g*), and sign the subjoined agreement.

5. The title to the property shall commence with an indenture Commence-
dated , being a conveyance upon a sale [or being a mortgage] (*h*). ment of

6. The purchaser shall require no other evidence of the identity of title.
the property purchased with the property described in the deeds and Evidence of
other documents offered by the vendor as the title than a statutory identity of
declaration, to be made, if required, at the purchaser's expense, that property.
the property has been enjoyed consistently with the title for the last
twenty years.

7. (*i*) The purchaser shall send his objections and requisitions, if any, Objections
in respect of the title and the abstract, particulars and conditions, and and requi-
anything appearing therein respectively to the vendor's solicitor within sitions.
days from the delivery of the abstract, and in this respect time

shall be of the essence of the contract; and in default of, or subject
to, any such objections and requisitions, he shall be deemed to have
accepted the title. If he shall insist upon any objection or requisition Power to
which the vendor shall be unable or shall not think fit to remove or vendor to
comply with, the vendor may, notwithstanding any negotiation or rescind.
litigation upon the subject of such objection or requisition, or any
attempt to remove or comply with the same, by notice in writing
rescind the sale; in which case he shall return to the purchaser the
deposit without any interest, costs or other payment.

8. The remainder of the purchase-money (*j*) shall be paid, and the Comple-
purchase completed, on the day of next (*k*) at the tion.
office of Mr. , the vendor's solicitor (*l*); and if from any
cause whatever the purchase shall not be completed on that day, the Payment of
purchaser shall pay to the vendor interest on the unpaid purchase- interest by
money (*m*) at the rate of £ per cent. per annum from that day purchaser.
until the completion of the purchase.

9. The purchaser shall be entitled to possession (*n*) of the property Possession;

(*f*) Or "to Mr. , the vendor's solicitor."

(*g*) For a condition providing for the investment of the deposit, see *post*,
p. 321.

(*h*) Any special stipulations required by the state of the title should be Special
inserted after this condition. conditions.

(*i*) Besides the cases cited on p. 98, *ante*, the following may be consulted:
Tanner v. Smith, 10 Sim. 410; *Minchin v. Nance*, 4 Beav. 332; *Cutts v.*
Thodey, 13 Sim. 206; 6 Jur. 1027; *Page v. Adam*, 4 Beav. 269; *Rippingall*
v. Lloyd, 2 Nev. & M. 410; *Taylor v. Brown*, 2 Beav. 180; cf. *Rede v.*
Farr, 6 M. & S. 121.

(*j*) If there will be any valuation-money, add "and the valuation-
money."

(*k*) The day named should be sufficiently distant to allow time for
investigating the title and preparing the conveyance. A quarter-day is the
most convenient for purposes of apportionment.

(*l*) Or "of the said Mr. ."

(*m*) [And on the valuation-money.]

(*n*) Or "the receipt of the rents and profits."

outgoings.	from the said day of next (o), up to which time all outgoings shall be cleared by the vendor; and all current rents and outgoings shall be apportioned for the purposes of this condition.
Conveyance.	10. Upon payment of the residue of the purchase-money (p) at the time and place aforesaid, the vendor shall make and execute to the purchaser a proper assurance of the property, such assurance to be prepared by and at the expense of the purchaser, and to be left by him for execution at the said office not less than seven days before the said day of next (q).
Easements, &c.	11. The property is sold subject to existing tenancies and to all easements (r), if any, affecting the same, whether mentioned in the particulars or not (s).
Compensation for errors in particulars.	12. The quantities stated in the particulars are believed and shall be taken to be correct; and if any error shall be discovered in the particulars before the completion of the purchase, but not afterwards (t), compensation shall be made in respect thereof by the vendor or by the purchaser, as the case may require, the amount of such compensation to be settled, in case of difference (u), by two referees, one to be appointed by each party, or their umpire; and, if either party shall fail to appoint a referee for the space of ten days after notice shall have been given to him by the other party to do so, the referee appointed by the other party may make a final decision alone (v).

Reservation of use of barns, &c., of farm.

(o) If it be not intended to give possession until the purchase is settled, instead of inserting a particular day as in the text, say: "On the execution of the conveyance." If it be wished to reserve the right to sell the produce of a farm, say: "The vendor shall be at liberty to hold auction-sales upon the farms and lands in hand at any time prior to the said day of next, and to use the barns, stabling, yards &c. until the Lady-day following, for the purpose of threshing out the corn and carrying off or feeding the hay, straw and fodder &c."

(p) See note (j), *supra*.

(q) A shorter form of this condition is: "On payment of the remainder of the purchase-money the purchaser shall have a proper conveyance of the property at his own expense." A condition that a mortgagor shall not be required to join in the conveyance is unnecessary; *Corder v. Morgan*, 18 Ves. 444; Sugd. 396.

(r) [Quit-rents or other incidents of tenure.]

(s) If the property is in lease with other property not for sale, and it be intended to apportion the rent, the following condition may be used: "The property intended to be sold being let on lease to A. B., with other property belonging to the vendor, at an entire rent of £ per annum, the sum of £ shall be apportioned as the rent incident to the reversion of the property intended to be sold; and such apportionment shall be accepted and deemed valid without the concurrence of the tenant." See 1 Dav. 4th ed. 691.

(t) *Bos v. Helsham*, L. R. 2 Ex. 72.

(u) [By the auctioneer, or by some counsel not before consulted by either party, or by arbitration in the usual manner (or as above)].

(v) If there is to be no compensation, say: "The particulars are believed and shall be deemed to be correct, and if any error shall be found therein,

13. If the purchaser shall fail to comply with these conditions, his Forfeiture deposit shall be forfeited, and the vendor shall be at liberty to resell of deposit the property at such time and in such manner as he shall think fit, and re-with or without notice to the purchaser at the present sale; and any sale. deficiency of price resulting from the re-sale; and all expenses attending the same, shall immediately after such re-sale be made good by the defaulter at the present sale, and in case of non-payment shall be recoverable by the vendor as liquidated damages (*w*).

[*Memorandum, to be annexed to the particulars and conditions;*]

MEMORANDUM. I, _____, of _____, hereby acknowledge that, at the sale by auction held this _____ day of _____, of the property described in the above particulars, I was the highest bidder for and was declared the purchaser of the said property, subject to the above conditions, at the price of £ _____; and that I have paid the sum of £ _____, by way of deposit and in part payment of the purchase-money, to _____, on behalf of _____; and I hereby agree to complete the said purchase according to the aforesaid conditions.

As witness my hand this _____ day of _____, 18 ____.

[*Purchaser's signature.*]

As agent for _____, I confirm the sale; and I acknowledge the receipt of the deposit.

[*Auctioneer's (or solicitor's) signature,
adding "for the vendor."*]

II.

CONDITIONS OF SALE OF A LEASEHOLD IN ONE LOT.

1—4. [*The same as in the last precedent.*]

the same shall not annul the sale, nor shall compensation be allowed in respect thereof."

In Scotland, a judge of the roup and an arbitrator are appointed for determining questions relating to the sale, thus:

"That W. W., Esq., of W., shall be judge of the roup, with power to determine whatever questions and differences may occur between the offerers and sellers, or betwixt the offerers themselves, in relation to the aforesaid roup, and with power also to adjourn the said roup and reduce the upset price, if necessary, from time to time, as he shall think proper, and to prefer the highest offerer to the purchase in manner above specified; and if any questions shall arise regarding the real intent and meaning of these articles, the same are hereby submitted and referred to the determination of J. C. Esq., sheriff substitute of C., as the sole arbiter nominated and appointed for that purpose, who is empowered finally to determine the same."

(*w*) Sometimes it is added: "And it shall not be necessary for the vendor to tender a conveyance;" but this is unnecessary; Sugd. 241.

Title.

5. (x) The title to the property shall commence with an indenture dated the day of 18 , being the lease [or underlease] under which the vendor holds the property. An abstract [or copy] of the lease [or underlease] creating the term sold, as mentioned in the particulars, can be inspected at during a period of fourteen days prior to the day of sale, or in the sale-room at the time of sale; and the purchaser shall be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement of such contents in the particulars [*Add, in the case of an underlease, and no inquiry is to be made as to the contents of the superior lease (y).*]

[*Remaining conditions as in the preceding precedent, so far as applicable.*]

MEMORANDUM [as on preceding page].

(x) See Wolstenholme and Turner, pp. 135, 141.

(y) Wolst. and Turner, 141. The following mode of referring to the lease is sometimes adopted:—"The lease under which the vendor holds the premises contains the usual lessee's covenants to pay the rent and keep the premises in repair, with a covenant to insure against fire, and not to exercise any trade or business on the premises; and the original [or a copy, or an abstract] of such lease will be produced for perusal and examination at the sale, and may be seen previously at the office of the vendor's solicitor. The vendor shall therefore be deemed cognizant of the contents of such lease." As to "usual" covenants, see *Brookes v. Drysdale*, 3 C. P. D. 52. If the circumstances of the case require it, the following words may be used: "The lease [or underlease] contains a restriction on assignment without licence. The vendor will immediately after the sale apply for and endeavour to obtain the necessary licence, and, if unable to obtain it within weeks from the day of sale, shall be entitled to rescind the contract for sale in the same manner and upon the same terms as if the purchaser had insisted on a requisition with which the vendor could not comply." See Wolst. and Turner, 142. Or: "And no objection shall be made on account of any variance between the covenants and conditions in the original lease, and any underlease or agreement with any tenant." The following condition has been adopted, where the underlessee was bound to insure: "The lease contains covenants for the payment of the rent, &c., and for insurance against fire in the names of the lessor and the lessee, and usual covenants. The underlease binds the lessee therein named to insure in the joint names of himself and the original lessor. A receipt for the last premium on such insurance shall be conclusive evidence that the premises have been and are insured according to the underlease; and the purchaser shall admit this to be a sufficient performance of the covenant in the original lease, &c." If the term be of ancient creation, it may be necessary to stipulate as follows:—"The deed creating the term shall be produced, but the purchaser shall not be entitled to call for the production of, or to investigate or to make any objections in respect of any mesne assignment of the term." If the lease be for lives, it may be proper to say: "The purchaser shall take the statement in the existing lease of the ages of the persons for whose lives the property is holden as conclusive evidence of the ages of such persons respectively." Or: "The purchaser shall not require

III.

CONDITIONS OF SALE OF FREEHOLDS, COPYHOLDS AND LEASEHOLDS
IN LOTS.

1. No person shall advance less than £ at a bidding (z); and no Biddings. bidding shall be retracted.

2. The vendor reserves the right to bid, by himself or his agent, once or oftener for each lot (a).

3. The highest bidder for each lot shall be the purchaser thereof; and if any dispute shall arise respecting any bidding, the lot in dispute shall be put up again at the last undisputed bidding, or the auctioneer may decide the dispute (b).

4. Immediately after the fall of the hammer each purchaser shall Deposit. pay to the auctioneer (c) a deposit of £ per cent. upon the amount of his purchase-money (d) and sign an agreement to complete the Contract. purchase in accordance with these conditions (e).

any evidence of the ages of the persons for whose lives the property is holden, except such as is in the vendor's possession, and shall make no objection on account of any inaccuracy in the statement of those ages." It is unnecessary to stipulate that the purchaser shall enter into a covenant to indemnify the vendor against the rents and covenants of the lease; see *Staines v. Morris*, 1 Ves. & B. 8; *Wilkins v. Fry*, 1 Mer. 244; 2 Rose, 371. If the vendor retains part of the premises, and the rent is to be apportioned without an underlease, the following condition may be used:—
"As the message now offered for sale is included in one lease with another message belonging to the vendor, it is intended that each of the said messages shall bear one moiety, and the vendor and purchaser shall enter into covenants with each other for the payment and performance of his respective proportion, of the rent and covenants, and they shall give to each other a power of distress upon the premises purchased and retained respectively, as an indemnity against such proportion; of which deed of indemnity two parts shall be executed, one for each party, and the same shall be prepared at their joint expense."

(z) Or "shall advance at a bidding less than the sum fixed by the auctioneer at the time of putting up the respective lots."

(a) Or "The auctioneer shall be at liberty to bid once or oftener on each lot for the benefit of the vendor." Or "There will be a reserve on each lot."

(b) See *ante*, p. 306, note (e).

(c) Or "to Mr. , the vendor's solicitor."

(d) The purchaser is sometimes required to pay lot-money, as follows: Lot-money. "The purchaser of each lot shall, immediately after the sale, pay to the auctioneer, for his trouble in selling the premises, the sum of £ for lot , £ for lot , and £ for each of the other lots; and shall also pay the like sum to the solicitor of the vendors for the contract or agreement, in addition to the stamp duty."

(e) Insert next the conditions which it is thought desirable to use with reference to the abstract and the title. The following form may be employed where the lots are numerous:—"No purchaser whose entire purchase-money shall fall short of £ , shall be entitled to a copy of the abstract of the title of the vendor, except at his own expense; but an abstract of Abstract.

Recitals, &c., to be evidence. 5. Every recital and statement, whether of a fact or of a conclusion of law, contained in any deed, will or other document dated twenty years or upwards prior to the day of sale, shall be deemed conclusive evidence of the facts and matters therein recited or stated, or to be inferred therefrom, and of the contents and due execution of all documents recited or stated therein and not in the vendor's possession; and no objection shall be made on account of the non-production of any such last mentioned document.

Evidence of identity of lots. 6. No purchaser shall require any other evidence of the identity of the lot purchased by him with any of the property described in the deeds and other documents offered by the vendor as the title than a statutory declaration, to be made, if required, at the purchaser's expense, that the property has been enjoyed consistently with the title for the last twenty years.

Objections and requisitions. 7. The purchaser of each lot shall send his objections and requisitions, if any, in respect of the title and all matters appearing on the abstract, particulars or conditions, to the vendor's solicitor within

Power to vendor to rescind. days from the delivery of the abstract, and in this respect time shall be of the essence of the contract; and in default of, or subject to, any such objections and requisitions, he shall be deemed to have accepted the title. If he shall insist upon any objection or requisition which the vendor shall be unable, or shall not think fit, to remove or comply with, the vendor may, notwithstanding any negotiation or litigation upon the subject of such objection or requisition, or any attempt to remove or comply with the same, by notice in writing rescind the sale, in which case he shall return to the purchaser the deposit without any interest, costs or other payment.

Title. the title of the vendor may be inspected at the office of Mr. , the the vendor's solicitor, by the several purchasers whose respective purchase-money shall fall short of the said sum of £ , and their respective solicitors. Within days from the day of the sale the vendor shall at his own expense deliver a copy of the said abstract to every purchaser whose entire purchase-money shall amount to or exceed the said sum of £ , or his solicitor." Or the following:—"The abstract of title may be inspected by the respective purchasers, or their solicitors, at the office of , who will deliver a copy to each purchaser requiring the same, at such purchaser's expense; the expense of a copy in no case to exceed £5; but the vendors are not to be required to furnish any further or other abstract of title." The following are specimens of stipulations limiting the purchaser's rights with regard to the title:—"The title to lot commences with an indenture, &c.; the title to lot , with the will, &c.; the title to lot , with (and so on). As to lot , the purchaser shall assume that A. B. was entitled in fee simple at the time of his death. As to lot , the vendor shall not be required to identify the freehold and copyhold portions of the estate. The purchaser shall not require the production of the original grant of lot . With respect to lot , the purchaser shall accept and take such interest therein as the vendor has. No objection shall be made to any document dated years or upwards prior to the day of sale being unstamped or insufficiently stamped, and any

8. The remainder of the purchase-money of each lot (*f*) shall be Completed, and the purchase completed, on the day of next (*g*), at the office of ; and if from any cause whatever the purchase of any lot shall not be completed on that day, the purchaser shall pay to the vendor interest on the unpaid purchase-money (*h*) at the rate of £ per cent. per annum from that day until the completion of the purchase. Payment of interest by purchaser.

9. The purchaser of each lot shall be entitled to possession (*i*) of the lot purchased by him from the said day of next, up to which time all outgoing shall be cleared by the vendor ; and all current rents and outgoing shall be apportioned for the purposes of this condition. Possession. Outgoings.

10. Upon the payment of the residue of the purchase-money (*j*) at the time and place aforesaid the vendor shall make and execute to the purchasers proper assurances of their respective lots, such assurances to be prepared by and at the expense of the purchasers, and to be left by them for execution at the said office not less than seven days before the said day of next (*k*). Conveyance.

document which any purchaser shall require to be stamped or further stamped shall be procured to be so stamped by him at his own expense.

(*f*) See *supra*, p. 307, note (*j*).

(*g*) See *supra*, p. 307, note (*k*).

(*h*) See *supra*, p. 307, note (*m*).

(*i*) See *supra*, p. 307, note (*n*).

(*j*) See p. 307, *supra*, note (*j*).

(*k*) If any part of the property is leasehold, and the rent is to be apportioned among different lots, the following conditions may be used: "The property comprised in lots and being held under one lease, at an entire rent of £ per annum, the said rent shall be apportioned among the said lots in the proportions mentioned in the particulars of sale ; and the purchasers shall, at their own expense, give and execute such mutual indemnities with regard to the payment of the said apportioned rents, and the observance and performance of the covenants and conditions relating to the lots purchased by them, as are usual in like cases." If the purchasers are to have under-leases, say: "As the property is held under a lease at one entire rent of £ per annum, the vendors shall execute under-leases to the several purchasers of the lot or lots purchased by them respectively for the whole original term, wanting three days, at the rents apportioned thereto in the particulars ; the under-leases to contain covenants similar to those contained in the original lease, and all necessary covenants for indemnifying the several purchasers against the payment of the rents, or performance of the covenants in respect of any other lots than their own, and for securing the payment of the rent and performance of the covenants by the several purchasers in respect of their own lots. All the under-lessees shall execute counterparts of their leases ; and all instruments required by this condition shall be prepared by, and at the expense of, the respective purchasers." If the largest purchaser is to take an assignment and grant under-leases to the other purchasers, say: "As the property comprised in lots is held under one lease, at an entire rent of £ , the rent shall be apportioned among the several lots in the shares mentioned in the particulars. The purchaser of the largest part in value shall take an assign- Apportionment of rent, &c.

Certifying
result of
sale.

5. The chief clerk of the said judge will after the sale proceed to certify the result; and , the day of , 18 , at of the clock in the noon, is appointed as the time at which the purchasers may, if they think fit, attend, by their solicitors, at the chambers of the said judge in the Rolls Yard, Chancery Lane [*or as may be*], in the county of Middlesex, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding, without further notice or expense to the purchasers.

Time for
delivery of
abstract.

Objections
and requi-
sitions.

6. The vendor is, within days (*p*) after such certificate has become binding, to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within days after the actual delivery of the abstract, to deliver at the office of Mr. A. B., solicitor at C., in the county of D., a statement in writing of his objections and requisitions, if any, to or on the title as deduced by such abstract; and upon the expiration of such last-mentioned time—and in this respect time is to be deemed of the essence of the contract—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.

Ascertain-
ing value
of timber.

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers and pollards, if any, on the lot purchased by him, down to 1s. per stick inclusive, the amount thereof to be ascertained by a valuation to be made in manner following, that is to say:—Each party (vendor and purchaser) or his solicitor is, within days after the chief clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment; and the valuers so appointed are to make such valuation; but before they commence their duty, they are to appoint an umpire by writing; and the decision of such valuers, if they agree, or of such umpire, if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof, in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

Payment of
purchase-
money.

8. Each purchaser is, under an order for that purpose to be obtained by him, or, in case of his neglect, by the vendors at the costs of the purchaser, upon application at the chambers of the said judge, to pay the amount of his purchase-money, after deducting the amount paid as a deposit, together with the amount of the valuation under the 7th condition, if any, into court, to the credit of [*&c.*; *as in the judgment or order directing the sale*], on or before the day of , 18 ; and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount

(*p*) The ordinary period is four or seven days after the certificate has become binding.

of such valuation, at the rate of £ per cent. per annum, from the day of , 18 , to the day on which the same is actually paid; deducting property-tax. Upon payment of the purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of , 18 , down to which time all outgoings are to be paid by the vendors.

9. If any error or misstatement shall appear to have been made in the above particulars, such error or misstatement is not to annul the sale, nor entitle the purchaser to be discharged from his purchase; but a compensation is to be made to, or by, the purchaser, as the case may be; and the amount of such compensation is to be settled by the said judge at chambers.

[Add to these such conditions respecting the title and title-deeds as the conveyancing counsel shall advise to be necessary or proper].

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said judge, upon application at chambers, for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale, and of all costs and expenses occasioned by such default.

Re-sale on default.

V.

CONDITIONS OF SALE OF STANDING TIMBER.

1.—4. *[The same as in Precedent III., ante, p. 311] (q).*

5. Each purchaser, his agents, servants and workmen, with or without horses, carts and waggons, shall have liberty to enter into the premises where the timber is growing, and to fell the trees, and to lop, cut and strip off the branches, tops and bark, and to dig saw-pits, and break up and saw the timber, trees and wood, in proper and convenient parts of the premises, and to put and make the said branches, tops and bark into convenient faggots, bundles or packages, and to lay and place the same in convenient parts of the premises to dry, and to remove the trees, branches, tops and bark off the premises by the usual and proper roads.

6. The trees shall be [axe-fallen], and [the roots got out of the How timber to be felled.]

(q) Sometimes a clause to the following effect is included among the conditions relating to the biddings:—"The auctioneer shall be at liberty to refuse any bidding, and to withdraw, consolidate or divide any of the lots contained in the particulars of sale." And the following condition is given in 1 Prid. 53:—"The vendor shall not be answerable for the description of any lot after the fall of the hammer. The purchaser must take it with all faults, errors of description or number, and be at all risks."

ground] in a workmanlike manner, and such of the trees as grow on the banks of brooks, gutters or rivulets shall be [axe-fallen] under the direction of the vendor, and in such a manner that the banks may not be broken in (r).

When timber to be carried away. 7. The whole of the trees shall be cut down on or before the day of _____, and the same, with the branches, tops and bark, shall be removed from off the premises before the day of _____; and any, or any part, of the trees, branches, tops or bark which shall not be cut down or removed before the said respective days shall thenceforth be forfeited to the vendor.

Purchaser to make good damage. 8. In entering and remaining upon the said premises, and felling, lopping, stacking and removing the timber, each purchaser, his agents, servants or workmen, shall use as much expedition and do as little damage as possible; and each purchaser shall, by or before the said day of _____, well and sufficiently repair and amend the hedges or fences, if any, which shall be broken or damaged by the fall or removal of the timber, or in any manner, by such purchaser, his agents, servants or workmen, and shall fill up the said saw-pits, and make good any other injury or damage which he or they shall commit or occasion in or about the lands of the vendor. No dogs are to be taken on to the estate by either the purchasers or their workmen.

Purchase-money. 9. The remainder of the purchase-money shall be paid in manner following, that is to say, one moiety, &c. [as the case may be] (s).

Arbitration. 10. If any dispute or difference shall arise respecting any of the premises or matters aforesaid, the same shall be settled by two referees, &c.

Neglect to comply with conditions. 11. If any purchaser or purchasers shall neglect or refuse to comply with any of the above conditions, the deposit-money and the wood uncleared shall be forfeited, the lot or lots re-sold by public or private sale, and the deficiency, if any, on the second sale, together with all expenses attending the same, shall be made good by the defaulter or defaulters at the present sale and be recoverable by the vendor as and for liquidated damages.

[Memorandum.] (See *supra*, p. 315.)

Damage to crops; 12. (r) The following conditions may be used, if necessary:—"The purchaser shall have the boughs and tops of the timber and other trees cut off and laid on the bodies thereof, or under the hedges and fences, whereby the least damage may be done to the crops of grain, within three days after their being fallen, and shall not work or carry away any part of the said timber or other trees, till after such crops of grain are cut or carried, except the bark of such timber or other trees, which the purchaser shall have carried from and off the said crops of grain, without taking any horse or carriage on such crops for such purpose."

to fences. "The purchaser shall allow [five] stakes for every tree fallen in the hedge-rows or fences, to make up the gaps in the said fences where such trees are so fallen as aforesaid."

Bond for completion. (s) Sometimes a bond is required for completion of the purchase, as follows:—

"The purchaser shall pay a deposit, &c., and shall also, within four days

VI.

A FEW MISCELLANEOUS CONDITIONS.

The purchaser, immediately on his being declared a purchaser, shall Where in- pay a deposit of £25 *per cent.* in part payment of his purchase-money, solvent and a charge to the auctioneer of one guinea on each lot, and also the ex- expected to pense of the stamp upon the subjoined contract, to which he shall imme- run up diately subscribe his name; and in default of his complying with any price. of these conditions, the vendor, or the auctioneer on his behalf, shall be at liberty, either immediately or within fourteen days, to declare the sale void, and to put up the property again, when the bidding of such defaulting party, or of any one on his behalf, may be rejected (*t*).

The (*u*) timber and other trees, pollards, stands, saplings and Where underwood upon the property, down to and including those of the fixtures, value of 1s. each (*v*), shall be taken by the purchaser at a valuation (*w*), timber, crops, &c., are to be

from this date, enter into a bond, with sufficient security, to be approved of by the vendor, for the due payment of the remainder of the purchase-money according to these conditions; until which security is given, the purchaser shall not commence cutting the wood." separately.

(*t*) See *Roberts v. Bozon*, 3 Atk. Conv. 2.

(*u*) "Fixtures of every description, and the."

(*v*) "And the crops, manure and straw."

(*w*) Or, more shortly, instead of "and he fair value," say: "To be made by two valuers, or their umpire appointed in the usual way, or otherwise at their fair value;" or: "To be made by the auctioneer, at the joint expense of the vendor and purchaser."

Upon sales of residential properties it is usual to say in the particulars:— Residential "The growing timber, also the stoves, bells and usual house fixtures will property. be included in the purchase. The blinds, carpets, cornices, and a few other items, of which an inventory will be produced at the time of sale, which can be inspected prior thereto at the offices of the auctioneers, are to be purchased in the customary way (see conditions of sale.) The purchaser will also have the option (to be declared in writing to the auctioneers on or prior to the day of next) of purchasing, by valuation in a similar manner, the growing crop of grass; should he not elect to do so, the vendor reserves the power of selling the growing crop of grass by auction, the purchasers of the grass to have the opportunity of cutting and removing it with horses, workpeople &c., at any time before the next." The conditions then provide as follows:—"The several tenant's fixtures and other articles specified in the inventory mentioned in the particulars of sale shall be taken by the purchaser at a valuation, to be made by two persons, one to be named by the vendor, and the other by the purchaser, or by an umpire, to be appointed by the valuers; but if either the vendor or purchaser shall fail to name a valuer, or to notify in writing his nomination to the opposite party on or before the day of next, or if the valuer named by either party shall fail to act, then the valuation shall be made by the valuer (if his nomination shall have been notified as aforesaid) of the other party alone. If no such valuation as aforesaid shall be made, then the said fixtures and other articles shall be paid for by the purchaser at their fair value."

and he shall pay for the same in addition to the purchase-money bid by him at the sale (*x*). The valuation shall be made by two referees, one to be chosen by each party, or their umpire. Each party shall

When it appears preferable to mention the exact articles to be taken at a valuation, the condition may begin as follows:—

"The several [fixtures] articles and things in and about the said premises mentioned in the schedule hereunder written [or "of which an inventory will be produced at the sale"] shall be taken by the purchaser at a valuation, &c. [*as above*]."

Tenants'
fixtures.

For tenants' fixtures the following form may be used:—

"All such articles and things in or annexed to the said message and premises, which, as between landlord and tenant, are or would be deemed to belong to the tenant or occupier of the said premises, shall be taken by the purchaser at a valuation, &c."

Furniture.

For articles of furniture:—

"All the articles of household or other furniture, utensils and things now in or belonging to the said message or dwelling-house, shall be taken, &c."

Colliery
plant.

For the plant of a colliery, &c.:—

"The steam and other engines, railroads, coal-waggon, and all the machinery, utensils, implements and plant used and being in and about the colliery called the Colliery, shall be taken by the purchaser according to the inventory, and at the valuation thereof, to be produced at the time of sale; and the purchaser shall pay for the same at such valuation, in addition to the purchase-money, on the day of 18, when the purchase is to be completed."

Brick-kiln.

For a brick-kiln, &c. (See Rouse's Practical Man):—

"The purchaser shall pay by valuation for the brick-kiln, and, at the option of the purchaser, all bricks, tiles, ware and prepared earth; but, if not taken, the vendor shall have until to complete and dispose of the same, and the use of the brick-kiln and yards for that purpose. The valuation shall be made, &c."

Farming-
stock and
crops.

For farming stock and crops, more fully (See Rouse's Practical Man):—

"The purchaser shall pay by valuation, as below provided, for the tillage of the summer lands; for seed, sowing and hoeing of turnips; for all hay and straw left on the premises which shall be stacked in the usual places; for all feed and after-grass on the pastures and stubbles; for all clover and other seeds, and for sowing, harrowing and cultivating the same, with the spring crops; for muck, mixtures and composts, and for labour in turning over such as shall not be carted on the land, and for the carting, when carted on the land; and also for all such other matters and things as are customary to be allowed and paid by an incoming to an outgoing tenant. The present year's corn and crops are to be laid in the barns, or stacked on the premises: the purchaser shall pay for thrashing and dressing, and getting in the stacks, and carrying the corn, when dressed, to market, not exceeding the distance of , &c., and have the straw, chaff and calder arising therefrom, the vendor appointing the threshers and having the use of the barns and barn-yards up to the day of for that purpose."

Timber.

(*x*) In the case of timber, an addition to the following effect is sometimes made:—

"But in case the value of the timber and timber-like trees shall, according to the valuation, exceed the sum of £ , the purchaser shall have the

appoint a referee and give notice (y) thereof in writing to the other party on or before the day of next, and the referees shall, before they begin to act, appoint an umpire in writing. In case either party shall neglect or refuse to appoint a referee, or to give such notice within the time specified, or if the referee appointed by either party shall neglect or refuse to act, the referee appointed by the other party, if duly notified, shall make a final valuation alone. If no such valuation as aforesaid shall be made, the said (z) trees &c. (a) shall be paid for by the purchaser at their fair value (b).

The purchaser shall take at a fair valuation, to be made by two appraisers, one to be appointed by the vendor and the other by the purchaser, or their umpire, to be chosen in the usual manner, all the furniture, tenant's fixtures, fittings and effects on the premises, other than the stock in trade and such things as the vendor may desire to remove; and the decision of the appraisers or umpire as to what are tenant's fixtures and fittings shall be conclusive. The purchaser shall also take such of the stock in trade upon the premises as shall not have been sold or disposed of at the time of the completion of the purchase, according to the valuation of two gaugers, one to be appointed by the vendors and the other by the purchaser, or their umpire, to be chosen in the usual manner; and the amount of the respective valuations, and a proportion for the time unexpired of the licences and fire insurances appertaining to the premises and the effects therein, and all outgoings, shall be paid by the purchaser at the time of the completion of the purchase; and if the purchaser shall neglect or refuse to appoint an appraiser for three days after being requested so to do, or to appoint a gauger on request, or if the appraiser or gauger appointed by the purchaser shall neglect or refuse to nominate an umpire on request, or to proceed in the valuation, the appraiser or gauger appointed by the vendor shall make the valuation alone and the same shall be binding on the purchaser (c).

benefit of such excess, and the sum of £ shall be considered as the full price of the whole of such timber and timber-like trees."

And the following (see *Brooks v. Rounthwaite*, 5 Hare, 298; 15 L. J. Ch. 332; 10 Jur. 656):—

"In case it shall be necessary to postpone the valuation until the fall of the leaf, the purchaser shall give to the vendor a bond in a sufficient penalty, conditioned for the payment of the sum at which the timber shall be valued within one calendar month after such valuation."

(y) *Two v. Harris*, 11 Q. B. 7; 17 L. J. Q. B. 1; 11 Jur. 947.

(z) "Fixtures and."

(a) "And crops, manure, and straw."

(b) See 1 Dav. 523. Or "At the sum of £ , at which sum they have been specially valued for the purposes of the present sale." The expense of the valuation is sometimes provided for as follows:—

"The expense of the valuation, and of all surveys, references, decisions, awards and other matters connected therewith, shall be paid by the purchaser;" or "by the vendor and purchaser in equal moieties."

(c) Key and Elphinstone's Compendium of Precedents in Conveyancing, p. 195.

Investment of deposit. Within seven days after the deposit shall be paid Mr. A. B. (d) shall lay out the remainder of the same, after deducting his commission, in the purchase of Exchequer bills; and such Exchequer bills, if paid off, shall be replaced by other like bills; and such Exchequer bills shall be deposited with the bankers of the said A. B., until the purchase shall be completed or abandoned; and if the purchaser cannot be compelled to complete his purchase and shall be enabled at law to recover his deposit, the Exchequer bills in which such deposit, after deducting the auctioneer's commission as aforesaid, shall then be invested, together with the interest, if any, which may have been received or become due for or upon the same bills or for or upon the bills in lieu of which the same may have been taken or purchased, and together with the amount of the said commission of the auctioneer, shall be accepted by the purchaser in full satisfaction of all claims for his deposit and the interest thereon and all expenses of investigating the title or otherwise.

Where title resting on adverse possession. The premises were surrendered in September, 18 , to the use of the late Mr. J. W., conditionally as a security for £500 and interest. At a court held in May, 18 , the homage presented the non-payment of the said £500, and that there was then due £541 13s. 7d., or thereabouts, and Mr. W. was thereupon admitted tenant. The right of redemption is supposed to be now barred or extinguished, and the vendor's title is rested on adverse possession under the Statute of Limitations. The purchaser shall not raise any objections on the ground of a possibly existing right of redemption, or require proof of circumstances constituting adverse possession under the statute, but shall accept such title as the vendor has to the premises, without requiring the concurrence of any other person or persons.

Where the purchaser is to accept an indemnity against an incumbrance. The estates comprised in the particulars are, together with other estates which produce a clear yearly rental of £ , or thereabouts, subject to a jointure rent-charge of £ *per annum*, and to a gross sum of £ charged thereon for portions; and it is intended that such of the estates subject thereto as are not comprised in the said particulars shall be henceforth subject to the said jointure and portions, and shall, before the completion of the purchase, be conveyed (subject to the said jointure and portions, and to some other charges of small amount now affecting the same) to two trustees, to be named by the vendor, to indemnify the purchaser against the jointure and portions. The purchaser shall be satisfied with the indemnity so to be provided, and shall make no objection in respect of any of the matters mentioned or referred to in this condition, and shall not be entitled to require any other evidence of the facts than the vendor is able to furnish.

The purchaser shall accept the vendor's bond (to be prepared by, and at the expense of, the vendor), in the penalty of £ , as an indemnity against a life annuity of £ affecting (e) the premises.

(d) The auctioneer.

(e) "Part of."

The purchaser shall not require evidence of any grant from the Crown under which any part of the premises is or may have been granted.

The purchaser shall presume payment and satisfaction of several legacies amounting to £ , which were charged upon the property by a will dated , and directed to be paid, &c.

The purchaser shall take a statutory declaration that for years and upwards no interest has been paid upon a mortgage made , and evidence that subsequent mortgages of the property have since been made and paid off, as conclusive evidence that such first-mentioned mortgage has been paid off and satisfied, and that a proper reconveyance of the legal estate was made.

The purchaser shall presume that A. B. was the only son of C. B., and was born at , on ; that A. F. was lawfully inter-married with A. N. ; and that M. S., who was tenant for life, &c., is dead, without requiring any evidence of the fact.

The purchaser shall assume that the testator A. B. was entitled in fee simple at the date of his will, and no evidence shall be required on this point.

The vendor being a trustee [or a mortgagee selling under a power of sale] will give only the statutory covenant implied by his being expressed to convey as trustee [or mortgagee].

B. CONDITIONS OF A LETTING BY AUCTION (a).

1. The biddings shall be upon the annual rent, to begin at £ per annum; and no person shall advance less than at a bidding.

2. The highest approved bidder shall be the tenant or lessee; but no bidding shall be accepted, unless approved of by the landlord's agent (b).

(a) It has not been considered necessary to insert more than one general form, with a few variations applicable especially to tolls and farms, the two descriptions of property most commonly offered to be let by competition. Any other stipulations usually entered into between landlord and tenant may be readily introduced at the proper places. An attempt has been made to express the conditions in such a way that, when confirmed by a proper contract, and signed by the parties, they may operate as an agreement for a lease under the Act for amending the Law of Real Property (8 & 9 Vict. c. 106, s. 3.) See Davidson's Concise Precedents, p. 63; see also note (c), *post*.

(b) Turnpike tolls are let by auction under 3 Geo. IV. c. 126. The first condition regulates the sums at which the tolls are to be put up; the second, third, fourth and fifth may be as follows:—

"2. The last or highest bidder [or bidders] above the said sum [or

- Deposit.** 3. Immediately after the fall of the hammer the highest approved bidder (being declared such by the auctioneer) shall pay into the hands of a deposit of £ , in part of the first half-year's rent, and sign an agreement for taking the premises according to these conditions.
- Contract.** 4. The landlord shall let, and the highest approved bidder shall take, the [farm, lands and] premises described in the foregoing particulars [with the fixtures now in, upon, or belonging to the same (or "together with the use of the fixtures, furniture, utensils, and things particularly mentioned in the schedule hereunto annexed")], for the term of years from the day of , at the highest yearly rent bid for the same, clear of all existing and future taxes, rates and outgoings; the same to be payable by equal payments on the day of , &c., in every year, the first of such payments to be made on .
- Lease.** 5. The landlord will, on the request of the highest approved bidder, execute a proper lease of the premises to such highest bidder, for the term and at the rent aforesaid.
6. The said lease shall contain covenants (c) on the part of the

respective sums], to be declared and determined in the manner directed by the said Act of the third year of the reign of His Majesty King George IV. shall be the farmer or renter of the said tolls, for the term of years from the day of .

"3. The rent shall be paid to the trustees [or commissioners] of the said turnpike-road for the time being, or their treasurer, or such other person or persons as they shall appoint, by thirteen equal monthly payments, at the end of each successive period of four weeks [or as the case may be], without any deduction; the first payment to be made on the day of .

"4. The taker or renter shall perform, observe, fulfil, abide by and keep all the conditions, restrictions, provisos, clauses and limitations respectively limited, inflicted and declared in and by the Acts, or any of them, concerning or appertaining to collectors or gate-keepers, or to the managing, recovering or receiving the tolls, or on any other account relating to or concerning the office of collector or gate-keeper; and also shall and will, from time to time, and at all times during the said term of [one] year, pay obedience to and perform all and every such orders and directions as shall be legal, and as the trustees [or commissioners] of the said turnpike-road, at any of their meetings, during the time aforesaid, shall think expedient and proper to be done by them respectively to the said turnpike-road and to the tolls to arise therefrom.

"5. The last or highest bidder shall enter into a proper agreement for the taking thereof, and paying the money at the times above specified, with one [or two] sufficient surety [or sureties], to the satisfaction of the trustees [or commissioners], for payment of such money, and under the conditions and in the manner herein directed and stipulated for that purpose."

For the form of the sixth and last condition on such a letting, see p. 328, *post*, note (e).

(c) A stipulation that the lease shall contain all usual covenants and

tenant for payment of the said net yearly rent on the days and in manner aforesaid; and for payment of all existing and future taxes, rates and outgoings; and to keep the premises in good and sufficient condition and repair, and so to deliver up the same [with all new fixtures and other additions] at the expiration of the said term (d).

conditions generally leads to disputes as to what are usual covenants and conditions. Mr. Davidson, therefore, suggests the specification of all the covenants and conditions intended to be inserted in the lease. "But even in such case," he observes, "disputes may arise as to the extent and form of the covenants and conditions, unless they are inserted literally as they are to stand in the lease." (Davidson's Concise Prec. 95.) Probably the safest mode of proceeding is to have an actual lease ready prepared and engrossed, with blanks for the name of the tenant, to be filled up and signed as soon as the letting is complete. In this case, a condition to the following effect might supersede several of the stipulations in the text:—

"Immediately or as soon as possible after the fall of the hammer, the landlord and the highest approved bidder [being declared such by the auctioneer] shall respectively sign, seal and execute a lease of the said premises to such highest bidder, for the term and at the rent aforesaid, the rent to be payable as aforesaid; which lease has been prepared and engrossed, with blanks for the name of the lessee, and is produced at the time of the letting for the inspection and perusal of the bidders, who shall respectively be deemed to have inspected and perused the same, and to be cognizant of its contents; and such of them as shall be declared to be the highest approved bidder shall be bound and required to enter into the covenants and conditions therein contained, as if such covenants and conditions had been embodied in, and formed a part of the present conditions of letting."

(d) For a public-house it may be necessary to insert in the tenant's covenants the following:—

"To continue the said dwelling-house and premises as an inn, ale-house and public-house, licensed for the sale and consumption of ale, spirits and wine; and to keep and conduct the same in such orderly, proper and regular manner that the magistrate's licence or certificate may not be taken away or be refused to be renewed; and, on the expiration of the tenancy, to assign the residue of the existing licences to the landlord, being paid for the unexpired time.

"And also to take, have and purchase from the said landlord, his heirs or assigns, and from no other person, all the table-beer, porter, ale, stout, wine, brandy, rum, holland, geneva, shrub and other spirits and malt liquor, and other liquor, which at any time during the said term shall be received, used, sold, consumed or sent out, in, upon or from the said premises; and to pay the fair current market price for the same."

Public-house.

And among the landlord's covenants, the following:—

"Also a covenant that the lessor shall serve the tenant with such good and palatable table-beer, porter, ale &c., at such and the same price, and of the same quality according to the price, as he usually serves his other customers; and shall, within ten days after notice, take back any bad or unpalatable articles which may have been supplied, and replace the same with good and palatable articles. It being understood that the lessor shall not be compelled to supply any goods to the tenant after he shall have contracted a debt for goods before delivered to the amount of £ , until such sum shall be fully satisfied."

The said lease shall also contain the usual power of re-entry on non-payment of the rent or non-observance of the covenants, and the usual conditional covenant on the part of the landlord for quiet enjoyment.

Farm.

For a farm the following addition to the tenant's covenants may be made:—

“And to cultivate, manure and manage the farm and lands in a fair and proper manner, according to the most approved course of husbandry, and not to convert into arable land any land now in pasture, without the consent of the landlord.”

The particular mode of management is sometimes stated, as in the following form (See Rouse's Practical Man), which is inserted rather as a memorandum of the particular points to be attended to, than as a precedent:—

“The lease shall contain all the necessary and usual covenants and conditions, and particularly the following:—

Reservations to the lessor:—

- Of right to cart and remove timber and other trees;
- Of mines, minerals and brick-earth, with right to work the same [allowing abatement of £ rent for each quarter of an acre required];
- Of game, and right, for lessor and friends, to sport;
- Of right to plant trees in fences;
- Of right for lessor [and his other tenants] to take sand from pit on the farm;

With general right of entry for inspection or other reasonable cause.

Covenants from lessee:—

- To pay rent, rates, taxes, and tithe-composition or commutation rent-charge;
- To repair, paper and paint [*stating how often*]; with separate covenant to repair within three months after notice;
- To provide straw for thatching, and clay for daubing, and keep thatch in repair; or, should lessor prefer reed, to pay half expense;
- To insure in £ in joint names, delivering policies and receipts; with power to lessor, in default, to insure and recover payment as rent. Money received on policies to be expended on the premises;
- To farm according to four-course system of agriculture, *i.e.*, one quarter summer-land, with ploughings, and harrowings; one quarter barley or oats, half being sown with clover or proper grass seeds; one quarter clover or grass layer, and beans or peas twice hoed; and one quarter wheat;
- To leave so farmed at determination of tenancy, being allowed by valuation; giving two days' notice of the ploughings, harrowings and sowings for which he claims valuation;
- To sign and deliver yearly, on , a schedule of cropping and farming;
- To consume hay, straw, clover, stover, turnips, carrots and beet on the premises, or for each load removed forthwith lay on farm two loads of good muck, under penalty of £ for each load removed; but to give notice of each such transaction;
- To stack produce on farm, and in last year to let in-coming tenant have straw, chaff and calder, on paying for threshing, dressing and carrying to market, not exceeding miles;

7. The highest approved bidder shall duly execute and deliver And to the landlord a counterpart of the said lease. counter-

8. The said lease and counterpart shall be prepared by the part. solicitor of the landlord at the expense of the [landlord and] tenant [in equal shares].

To consume muck on premises, except in last year, when to be laid up in heaps for in-coming tenant, by valuation ;

To do rods of hedging and ditching yearly, and rods of under-draining ;

To cleanse the river and marsh ditches once in two years, or oftener if requisite ;

To protect the timber and other trees, shrubs &c. from injury, under penalty of £ for each timber, £ for each other tree, stand or sapling, and £ for each shrub or plant, beyond its value ;

To plant whitethorn wherever chasms happen in fences ;

To reside in house, under penalty-rent of £ , recoverable as other rent ;

To preserve game, and give notices, and allow actions ; the lessor agreeing to indemnify ;

To keep a dog for lessor, and allow lessor to keep a horse on pastures for weeks, between the months of and , the lessee taking proper care of it, without allowance ;

To do days' work for lessor, with carts and horses properly attended, when required ;

To yield up to lessor, on request, any parts of land, not exceeding , for planting on ; the apportioned rent of per acre to be deducted from subsequent payment of rent ;

To provide lessor with good wheat-straw in exchange for muck, and deliver and take same ;

To accept bills at two months for rent, at any time after it becomes due, with proviso that the same shall not prejudice lessor's remedies for rent till payment ;

Not to plant above with potatoes [or other specified exhausting produce] in any year, under penalty-rent at rate of £ an acre for excess, recoverable as reserved rent ;

Not to sell or allow removal of sand off the farm (except to lessor or his tenants), under penalty of 20s. per cart-load ;

Not to break up meadows or pastures, under penalty-rent at rate of £ an acre, recoverable as reserved rent ;

Not to break up banks or borders, under penalty of 20s. per rod ;

Not to cut down, remove, lop, top or injure trees or woods, by nailing or inserting gates, posts or rails, or otherwise, under penalty of £ a tree, and £ a load for wood, beyond value ; but to have power to lop, not exceeding one [tenth] of pollard trees in any year, on giving notice and account ;

Not to occupy another farm ;

Not to assign or under-let (except as to cottages), or part with possession, without licence ;

Not to suffer any new footpaths ;

Not to alter front or elevation of house or buildings without consent, or carry on any trade therein ;

Not to alter boundaries of fields.

9. Until the execution of the said lease, the said premises shall be held by the highest approved bidder as tenant to the landlord, at the rent aforesaid, and subject to the covenants and conditions to be contained in the said lease as aforesaid, so far as the rules of law will permit.

Arbitra-
tion.

10. In case any dispute shall arise the same shall be referred to two referees &c. (*See ante, Precedent I., Form 13*).

11. (e) Should the highest bidder neglect or fail to comply with these conditions, his deposit-money shall be thereupon forfeited to the landlord, who shall be at full liberty [either to enforce the letting or] to re-let the premises, at such time and place and in such manner as he shall think fit; and, in case of a re-letting, he shall have the benefit of the increase (if any) in the rent; and the deficiency (if any) for the whole term, and all costs and expenses, shall be made good by the defaulter at the present auction, and be recoverable as liquidated damages (f).

C. CONDITIONS OF SALE OF PERSONAL PROPERTY.

I.—GOODS (a).

Biddings.

1. The highest bidder to be the buyer; and if any dispute shall arise respecting any bidding, the lot in dispute to be immediately put up again.

Usual covenant from the lessor:—

For quiet enjoyment.

Provisoes:—

For re-entry on non-payment of rent for twenty-one days (although no formal demand); on assignment or under-letting; ceasing to reside; becoming bankrupt or insolvent; mortgaging or depositing lease; making assignment for benefit of creditors; suffering execution or extent; or doing any act by which the premises may be affected;

That lessor, on selling any part of premises may apportion rent;

That receipts for rent shall not be waiver of penalties, nor licence waiver of future breach;

And for leaving matters in dispute to arbitration."

(e) The sixth and last condition on a letting of tolls may be as follows:—

"If the last bidder [*or bidders*] shall not forthwith enter into such agreement, or shall refuse to perform these conditions, it shall and may be lawful to and for the trustees [*or commissioners*] of the said turnpike road to put up the said tolls again immediately, or at any time afterwards, and to re-let the same, as if no such bidding had been made; in which case the deposit-money (if any) shall be forfeited, and any deficiency on such subsequent letting shall be made good by the defaulter at the present letting, and be recoverable as and for liquidated damages.

(f) For form of contract to be used in a case of this description, see *post*, p. 344.

(a) The conditions in the text are used extensively at different auction-rooms in London, and elsewhere, on the sale of furniture and other effects,

2. No person to advance less than sixpence; above ten shillings, one shilling; above five pounds, five shillings, and so on in proportion.

3. The purchasers to give in their names and places of residence, Deposit, if required, and to pay down a deposit of thirty *per cent.* in part payment of the purchase-money (*b*); in default whereof the lot or lots purchased by them may be immediately put up again and resold.

4. The lots to be taken away with all faults (*c*), at the buyer's Clearance, expense, within two days after the sale (*d*), and the remainder of the Purchase-money to be paid on or before delivery (*e*). Payment.

5. Upon failure to comply with any of the above conditions, the Re-sale. money deposited in part payment shall be forfeited; and all lots uncleared within the time aforesaid shall be re-sold by public or private sale, and the deficiency, if any, on such re-sale, together with all charges attending the same, shall be made good by the defaulter at the present sale.

when the goods are exhibited on the spot. They are also adapted to a pawn-broker's sale.

(*b*) Sometimes the following is added:—

"And one shilling and sixpence to the auctioneer, to bind the bargain, for all lots sold under £5; two shillings and sixpence for all lots sold at or over £5 and under £10; five shillings for all lots sold at or over £10 and under £20; and £1 5s. *per cent.* for all lots sold at or above £20. Lot-money.

(*c*) See *ante*, pp. 59, 60.

(*d*) See *ante*, p. 105.

(*e*) On a sale of books the following condition is frequently used:—

"The books are presumed to be perfect, unless otherwise expressed; but, if, upon collating at the place of sale, any should prove defective, the purchasers will be at liberty to take or reject them; but the sale of any book or books is not to be set aside on account of any stained or short leaves." Books.

Sometimes a condition to the following effect is introduced:—

"In the event of any purchaser at this sale neglecting to pay for and take away any lot or lots he or she may have purchased, and the same remaining for a longer period than one month from this date, such purchaser, in addition to the amount of the purchase-money, shall, upon each lot so left, pay one shilling per week for warehouse-room, and also five *per cent. per annum* interest on the amount of the said purchase-money; the same to be reckoned from this day to the time of clearing." Warehouse-room.

Or, more simply:—

"Warehouse-room and expenses of removal will be charged on all lots left uncleared after the time specified, until such lots are taken away or re-sold" (See also next precedent, Form 5).

Where by the terms of the contract goods were to be taken away at the purchaser's expense in fourteen days from the day of the sale, and the purchase-money was to be paid on or before the delivery of the goods, it was held that the seller was bound to deliver when called upon, at any time during the fourteen days, and had not fourteen days to deliver the goods, although the purchaser had fourteen days to take them away; *Hagedorn v. Laing*, 6 Taunt. 162; 1 Marsh. 514.

II.

THE SAME. ANOTHER FORM.

- Biddings.** 1. The highest bidder, if in due time, to be the purchaser; subject to the auctioneer having a right to refuse the bidding of any person. Should any dispute arise between two or more approved bidders, or between the auctioneer and any approved bidder, the lot in dispute to be put up again, or not, at the discretion of the auctioneer. The vendors reserve the right to bid.
2. No person to advance less than 1s. at each bidding; above five pounds 5s.; and so on in proportion; nor to retract a bidding.
- Deposit, &c.** 3. The purchasers are to pay down immediately a deposit of five shillings in the pound, or such other sum as the auctioneer may name, in part payment (each deposit to be applicable to any lot or all lots purchased), and to give in their names and places of abode, when required; in default of which the lot or lots purchased by them to be at the disposal of the auctioneer.
- Sale "with all faults."** 4. All lots to be taken away with all faults, imperfections and errors of description, at the purchaser's expense and risk, before 4 o'clock on _____, and the remainder of the purchase-money to be paid before delivery. In cases where one buyer purchases more than one lot, the whole of the amount of the lots purchased is to be paid before any one lot is delivered; also, to prevent inaccuracy in delivery, and inconvenience in the settlement of purchases, no lot can on any account be removed during the time of sale; and no person shall be entitled to anything not described in his lots. No allowance whatsoever will be made for errors in description or quantity; but the lots are to be cleared as shown at the sale; and no lots will be transferred from one buyer to another.
- Payment of price.**
- Removal of goods.** 5. All lots left after the specified time will be liable to any expenses that may arise from their not having been cleared in accordance with the fourth condition.
6. The purchasers to be answerable for all damage they may do to any lots, or to the premises, in taking down or removing their respective lots, and to properly repair the same before their lots are removed from the premises.
- Re-sale, &c.** 7. Upon failure to comply with the above conditions, the money deposited shall be forfeited; the lots uncleared within the time aforesaid shall be re-sold, either by public sale or private contract, and the deficiency, if any, upon such second sale, together with all charges attending the same, shall be made good by the defaulter or defaulters at the present sale, and be recoverable as and for liquidated damages; but any surplus that may arise therefrom shall belong solely to the vendors.
- Disputes.** 8. The auctioneer to be the sole arbitrator in every matter of dispute.

III.

CONDITIONS OF SALE OF A SHIP.

The owners of the ship or vessel called the *L*, of _____, of the measurement of _____ tons, or thereabouts, now lying at *S.*, cause her to be exposed to sale on the conditions following, viz.:—the owners do consent and agree that whosoever bids most and last in due time, after he has declared his name and the broker has repeated the same, shall be deemed the buyer, who is immediately to pay on account one-fourth part of the purchase-money, and the residue within one month after the sale, or at the time of delivery of the bill of sale, whichever may first happen, and two guineas to the broker to bind the bargain. On payment of the whole purchase-money, a legal bill of sale shall be made out to the purchaser at his expense, and the vessel, with what belongs to her, shall be delivered according to the inventory which has been exposed; but the said inventory shall be made good as to quantity only. The vessel and stores shall be taken with all faults, in the condition they now lie, without any allowance for weights, lengths, qualities, or any defects whatsoever.

In case any default shall be made by the purchaser or purchasers in the payment afore-mentioned, the money paid in part shall be forfeited to the sole use of the present owners, and they shall be at liberty to put up and sell the said vessel again; and the buyer or buyers so neglecting shall be liable for all loss, costs and damages which may accrue thereby.

The said ship is declared to be at the risk of the purchaser, immediately after the sale. The said vessel is put up at £ _____; bidders to advance not less than £ _____ at each bidding. If any difference shall arise at the sale, the said vessel may be put up again.

IV.

MESSRS. TATTERSALL'S CONDITIONS OF SALES OF HORSES AND CARRIAGES.

Albert Gate, Hyde Park, October 23rd, 1780.

Conditions of every Sale by Auction and Private Contract at this Place.

1. The highest bidder to be the buyer; and if any dispute arise between any two or more bidders, the lot so disputed shall be immediately put up again and re-sold.

2. No person to advance less than five shillings; above ten pounds, ten shillings, and so on in proportion.

3. The purchasers to give in their names and places of abode (if required) and to pay down five shillings in the pound (if required) as earnest, and in part of payment; in default of which, the lot so purchased may be immediately put up again and re-sold, if the auctioneer shall think fit.

4. The lots to be taken away within one day after the sale is

ended, at the buyer's expense, and the remainder of the purchase-money to be absolutely paid before the delivery of the lot.

5. Upon failure of complying with the above conditions, the money deposited in part of payment shall be forfeited to the owner of the lot, he paying thereout all just expenses, and the lot shall be re-sold by public or private sale, and the deficiency (if any) attending such re-sale shall be immediately made good by the defaulter at this sale.

6. If any person shall purchase a lot and not pay for it within the time limited by the fourth condition, nothing contained in the fifth condition shall prevent the auctioneer, or owner of the lot, from compelling the purchaser to pay for it, if the auctioneer or seller shall so think fit.

7. The vendor shall be entitled to receive the purchase-money of each lot not warranted on the third day from the sale day; and all horses sold with a warranty of any description on Monday will be paid for on Friday; and all horses sold with a warranty of any description on Thursday will be paid for on Tuesday; provided that the auctioneer shall then have received the purchase-money, or delivered the lot out of his custody, but not before.

8. The purchaser of any lot warranted in any way and not answering the warranty given, must return the same on or before the evening of the second day from the sale; otherwise the purchaser shall be obliged to keep the lot with all faults.

9. All horses, carriages, &c., brought to this repository for sale, and sold, or advertised to be sold, by private contract, either by Messrs. Tattersall, the owner, or any one acting as agent for the owner of such horses, carriages, &c., shall pay the usual commission; and no person shall take away his horses, carriages, &c., until the commission, keep and other expenses are paid, whether the same have been sold by public auction or private contract, &c., or are not sold.

10. All horses, carriages, &c., advertised by Messrs. Tattersall (though not upon the premises at the time of sale, either by private contract or public auction) shall pay the usual commission.

Lastly. The conditions of sale are:

If sold by public auction, one shilling in the pound;

If by private contract, one shilling in the pound; and

If not sold, $2\frac{1}{2}$ per cent. on the reserve price up to 200 guineas.

No lot will be offered for less than five shillings.

The days of payment are, for unwarranted horses sold on Mondays, Wednesdays; for warranted horses, Fridays only, between the hours of ten and four o'clock.

N.B.—No money paid without a written order.

V.

CONDITIONS OF SALE USED AT ALDRIDGE'S HORSE AND CARRIAGE REPOSITORY.

1. The highest bidder to be the buyer, and if any dispute arise between two or more bidders respecting any lot, before the same is

returned into the stable or place of such lot, it may be immediately put up again for sale, or the auctioneer may declare which bidder he thinks proper to be the purchaser.

2. No person to advance less than five shillings above one pound ; ten shillings and sixpence above ten pounds ; and one guinea after twenty guineas, and so on in proportion.

3. Buyers are to state their names and places of abode, and pay a deposit of 25 *per cent.* on each lot at the time of purchase, and the remainder of the purchase-money on the day of sale and before delivery of the lot ; and in case of non-payment the seller may either rescind the contract, in which case the deposit will be forfeited, or re-sell the lot by public auction on the buyer's behalf with or without notice to him, in which case the buyer will be liable to pay to the seller the difference (if any) between the sum agreed to be paid by him for the lot and the amount realized by such re-sale ; also the commission on the re-sale, the keep of the lot, and all other charges whatever, deducting the deposit.

4. Any horse sold at this establishment with a warranty must, in case the buyer contend that it does not correspond with such warranty, be returned before five o'clock, p.m., on the second day after the sale (Sunday excluded) ; otherwise it shall be deemed and taken to be in all respects as warranted, as between all persons, and the non-return within the time limited shall be a bar to any claim on account of any breach of warranty, and the buyer shall be bound to keep and pay for the horse, whether it be or be not according to the warranty.

5. Should a horse warranted quiet in harness, or to ride, be so returned, it shall be tried by an impartial person, to be named by the proprietors of this establishment, whose decision shall be final and conclusive upon all persons ; and a fee of ten shillings for the trial shall be paid by the party in error.

6. Should any horse, sold here, warranted to ride or draw, be considered by the buyer to be incapable of working, from any infirmity or disease, it may be returned here before five o'clock on the second day after the sale, with a certificate from a veterinary surgeon to that effect ; if not so returned with such certificate, it shall be taken not to have been returned within the meaning of the fourth condition ; and if such certificate be not confirmed by another, to be furnished by the vendor within two days, or in case the vendor shall neglect or refuse to furnish such certificate, the auctioneer shall immediately appoint a veterinary surgeon, whose decision shall be final and binding, and the whole expense must be paid by the party in error.

7. No horse considered to be affected with glanders, mange or other infectious or contagious disorder must, under any circumstances, be returned in accordance with the fourth condition ; but in lieu of such return a notice in writing of the fact of the horse being so affected, and of the place where it stands, must be given at this establishment within the time mentioned in that condition, accompanied with the certificate of a veterinary surgeon that the horse is

so affected ; and in case of omission to give such notice, accompanied by such certificate, within such time, the said horse shall be deemed and taken to be, as between all persons, not affected by any such disorder, and such omission shall be a bar to any claim on account of the said horse being so affected, and the buyer shall be bound to keep and pay for the same whether it be or be not so affected.

8. If such notice from the buyer, accompanied by such certificate, be given, the vendor will immediately be required to procure a certificate from his veterinary surgeon ; and in case of non-agreement of these two opinions, or in case the vendor neglect or refuse to furnish such certificate within two days after his receiving the notice, then the auctioneer shall appoint a veterinary surgeon, whose decision shall be final and binding upon all parties, and all expenses must be paid by the party in error.

9. The seller shall in no case be entitled to receive payment of any money before it has been received from the buyer ; but if received, he shall be entitled to the net proceeds, of the property sold at the Wednesday's sale, on the following Monday, and on property sold on Saturdays, on the following Thursday, between ten and four o'clock.

10. A right is reserved to the vendor of any horse, carriage, or other property sent to or left at this establishment, to bid by or through the auctioneer ; and unless such property is protected by a written reserve, it shall be considered to have been so sent or left for the purpose of sale by auction, and may be sold by public auction, without reserve, at the next sale day after it shall have been so sent in ; or if any horse, carriage, or other property, protected by a written reserve, be not sold or removed within one month from the date of such reserve, the same may be sold by public auction without reserve, at the next sale day, with or without notice to the owner, who may receive the net proceeds of such sale on either of the days as above.

11. Five shillings is charged on each horse, five shillings on each carriage, two shillings and sixpence on harness or saddle and bridle, and ten shillings on each dog entered on the books for sale, whether the lot or lots be put up or not ; and the commission on all sales is five *per cent.*, except for dogs, which is ten *per cent.* ; and shall apply to any lot returned as not answering warranty.

3s. 6d. is charged for the keep of each horse per day and night ;
6d. for ostlers ; and, if sold, 1s. 6d. for halter.

5s. is charged per week for the standing of four-wheel carriages ;
and 3s. per week for the standing of two-wheel carriages ;
and 1s. for washing.

12. The above conditions apply to all horses, carriages, &c., brought to this repository for sale, whether they be sold by auction, or privately by the owner, or by any person employed by him.

13. No horses, carriages, &c., shall be taken away until all expenses are paid.

Lastly. The name, description and address given by the vendor will in all cases be furnished to a purchaser, if requested ; and in case of dispute the remedy of the buyer shall be against such vendor

only, and in no case or under any circumstances against the auctioneer or proprietors of this establishment, who are to be regarded to all intents and purposes as agents for a disclosed principal.

VI.

CONDITIONS OF SALE OF STOCKS AND SHARES.

1. The highest bidder shall be the purchaser; and if any dispute Biddings arise as to any bidding, the lot in dispute shall be put up again, or the auctioneer may decide the dispute.

2. No person shall advance at any bidding a less sum than shall be named by the auctioneer at the time of sale; and no bidding shall be retracted. The vendor reserves to himself the right to fix a reserve price, and to bid up to that sum by himself or his agent.

3. Each purchaser shall immediately after the sale pay into the Deposit. auctioneer's hands a deposit of £10 *per cent.* in part payment of his or her purchase-money, and sign an agreement for payment of the Contract. remainder at the offices of the auctioneers, , , on the day of , when and where the purchases are to be completed; Interest. and if from any cause whatever any purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £10 *per cent. per annum* on the remainder of the purchase-money from that day until the actual completion of the purchase.

4. The title to the shares shall consist solely of certificates of the Title. respective companies, showing such shares to have been registered in the names of the owners, who will, at the expense of the purchaser, Assign- assign the said shares to him, or otherwise cause the same to be ment. vested in him.

5. If any lot shall appear to have been improperly described, or Compensation. any other error or misstatement be found in the particulars, such misdescription, error or misstatement shall not vitiate the sale, but the vendor or purchaser, as the case may be, shall allow or pay a compensation in proportion to the amount of the purchase-money, the amount of such compensation to be determined by the auctioneer.

6. The auctioneer acts upon the sale only as agent for the vendor, Auctioneer whose name he will disclose at the sale. He will not guarantee any only agent. transfer or registration, or any other formality or other matter.

7. If any of the purchasers fail to comply with any of the above Re-sale, &c. conditions, the deposit-money paid by him or her shall be absolutely forfeited to the vendors, who shall be at full liberty to re-sell the property sold to such purchaser or purchasers, either by public or private sale; and the deficiency, if any, arising from such second sale, together with all expenses attending the same, shall be made good by the defaulter or defaulters at the present sale, and be recoverable as liquidated damages, and it shall not be requisite for the vendors previously to tender any assignment or transfer to such purchaser or purchasers.

MEMORANDUM.—We, the undersigned, hereby acknowledge that at the sale by auction made this day of the property comprised in the above particulars we became the purchasers of the lots, in the schedule hereunder written, against which we have signed our names, at the prices therein stated, and have paid the deposits therein mentioned; and we hereby agree to complete the said purchase agreeably to the annexed conditions.

SCHEDULE.

Lots.	Purchase-money.	Deposit Paid.	Purchaser's Signature.	Purchaser's Address.

On behalf of the vendor we hereby confirm the above sale.

[Auctioneers' signature.]

[Date.]

VII.

CONDITIONS OF SALE OF A POLICY OF INSURANCE, A LIFE OR REVERSIONARY INTEREST IN PERSONALTY, &c. (f).

1—4. [The same as in Precedent I., *ante*, p. 306.]

5. The vendor shall, within [fourteen] days from the day of sale,

(f) Although it has been found convenient to class these matters under one head, it is hardly likely that the same set of conditions will exactly apply to all of them. Much depends upon the nature of the property and the circumstances of the title. When the property passes by deed, the conditions will not vary materially from those already given for a sale of a freehold or leasehold estate. When it is transferable by the handing over of scrip or other *indicia* of property, or by simple indorsement or registration, the conditions assume more the character of those used on the sale of goods, and the stipulations respecting the delivery of an abstract, &c., should in such cases be omitted.

Life policy. On the sale of a policy of insurance, if the vendor is not able to prove that the person on whose life the assurance is made was in good state of health when the policy was effected, and of the age mentioned in the policy, and that nothing has been done to vitiate the policy, conditions should be inserted restricting the purchaser's rights in these respects; *Brealey v. Collins*, You. 317. So also, if the vendor is not prepared with evidence that the person who effected the assurance had an assurable interest within the meaning of the statute 14 Geo. III, c. 48 (*i.e.*, a pecuniary interest; *Halford v. Kymer*, 10 B. & C. 724), in the life of the assured, and that such

deliver to the purchaser or his solicitor an abstract of his title to the property (g).

6. [See *ante*, p. 307, Form 7.]

7. [See *ante*, p. 307, Form 8.]

8. [See *ante*, p. 308, Form 10.] (h).

9. If any error, &c. [See *ante*, p. 308, Form 12.]

10. If the purchaser shall fail, &c. [See *ante*, p. 309, Form 13.]

[*Memorandum.*]

VIII.

CONDITIONS OF A COMMERCIAL SALE (i).

1. The highest bidder to be the purchaser ; if any dispute arise it is to be decided by a show of hands, or to be left to the decision of the selling brokers.

interest is subsisting at the time of the sale, the want of such evidence should be noticed in the conditions.

On the sale of life and reversionary interests, if legal proof cannot be had of the ages of the persons interested in the property, conditions restrictive of such evidence should be inserted. If the property consists of a life interest in the funds, and it is intended that "the purchaser shall not be entitled to any dividends which shall accrue due or be payable on any day prior to the actual completion of the purchase," an express stipulation to that effect should be inserted; *Anson v. Towgood*, 1 Jac. & W. 637.

(g) If there be any restriction as to the title of the property, it should be introduced in this place.

The following conditions are frequently used on the sale of policies of insurance :—

"The vendor shall not be required to verify the statements in the declaration made in the insurance-office on effecting the policies, except that, when the age of the insured has not been admitted by the said office to be correct, the vendor shall produce certificates of baptism, which shall be deemed conclusive evidence as to age.

"The purchaser shall require no further evidence of the validity of the policy than the solemn declaration of Mr. _____, the assured, that when the policy was effected he was in a good state of health [or, "he had an insurable interest in the life mentioned in the policy, to the amount of £ _____"], and that nothing has been done, within his knowledge, to vitiate the policy, and the production of the receipt for the premium last due."

(h) The following, or a corresponding stipulation, may be inserted next : "Upon payment of the residue of the purchase-money at the time and place aforesaid the purchaser shall be entitled to all advantages accruing upon the [policy] from the time of the sale. [The purchaser shall pay all premiums becoming due upon the policy between the time of the sale and the completion of the purchase]." Or: "The death of [the vendor] before completion shall not affect the validity of the contract."

(i) Commercial sales are usually held by brokers who are also licensed as auctioneers. The conditions in the text are, in a great measure, founded upon those formerly used by the East India Company.

2. The buyers of goods at this sale are to pay all duties of customs and excise which have been or may be imposed upon the same.

3. If any broker who may purchase at this sale should not declare his principal, within three days, in writing, he will be considered as the principal. And all brokers who shall buy any goods for persons residing in the country or abroad shall, at the same time they declare their principals, produce their orders for the same, together with an undertaking from a resident known agent in London to make good the contract. Should any broker neglect to declare his principal in manner above mentioned, or should he buy any goods for persons under age, he shall be esteemed the principal, and shall himself be obliged to pay for the goods so bought by him.

4. Every person, whether broker, agent or principal, who shall be declared the best bidder for any lot or lots of goods at this sale, shall make such deposits in money, on the , as are expressed in the catalogue, which said deposits will be allowed in part payment; and the remainder of the purchase-money shall be made good on delivery of the warrants, on or before the prompt day printed in the catalogue, without interest or discount (j).

5. (k) The [arrowroot to be re-weighed and taken at the re-weights,

(j) The following variations, as to the time and mode of payment, are sometimes adopted:—

“Payment to be made for the tapioca and ginger on the , or on delivery; interest being allowed, at the rate of four per cent. per annum, to the , with two and a half per cent. discount.

“Payment to be made, on delivery of the bills of parcels, by bills, on London, to the satisfaction of the sellers, not exceeding three months' date, to be made equal to cash in four months from the day of sale.”

(k) Instead of this condition, sometimes the following is inserted:—

“The goods to be taken with all faults and defects, as they now lie; to be re-weighed within ten days, and to be at the purchaser's risk from the time of weighing; and to be taken from the scale at the purchaser's expense; and the warehouse to be cleared within two months, or rent to be paid for any that may remain after that time.”

When goods are sold on the quay, the following is usually made one of the conditions:—

“The goods to be taken with all faults and defects, as they now lie [or, “from the vessel as landed”], and to be at the purchaser's risk from the time of passing the scale; and if any remain on the quay, the purchaser shall be liable for all fines or other expenses in consequence of the same not being removed.”

When the subject of sale is cotton, it is usual to substitute the following condition:—

“The cotton to be weighed in the course of ten days from the day of sale, with the customary allowances of this port; to be at the purchaser's risk from the time of weighing; and the warehouses to be cleared within ten days from the day of sale, or the purchasers to pay rent for such as may remain after that time.”

On customs sales the following are inserted:—

“The goods to be re-weighed, re-gauged or computed previously to being

the ginger at the landing weights, and the other] goods to be taken at the warrant weights and tares, with customary allowances, as they now lie in the warehouses mentioned in the catalogue, where they may be inspected [by obtaining an order for that purpose from the selling brokers], and where they will be at the risk of the sellers until the prompt day (*l*), a delivery of the warrants [or orders of delivery] or the day of payment, whichever may first happen. [Objection as to quality or description will not be entertained, unless made within fourteen days from the time of sale (*m*).]

6. Lot money as customary.—Rent chargeable to the buyers after the prompt day.

7. In the event of any non-fulfilment of these conditions, the goods may be re-sold immediately, either by public or private sale, at the option of the selling brokers; and all losses, charges, interest of money, or any other expenses whatever, that may accrue, shall be made good by the purchaser at this sale (*n*).

IX.

CONDITIONS OF SALE USED AT THE BALTIC (FALLEN TIMBER) SALE-ROOM.

1. The highest bidder (in due time) to be deemed the purchaser, and in case of any dispute the lot to be put up again.

paid for; but when put up at so much all, the quantity is to be understood to be more or less, though not so expressed; to be taken away with all faults, and no advantage to be taken by the purchaser if any goods are misnamed in the catalogue.

"The goods shall not, after sale, be opened with a view to buying and selling, nor shall any lot be delivered in part, whether for home consumption or for exportation."

The following clause was formerly used at the East India Company's sales:—

"In all cases where the goods have been exposed to view, so as to afford opportunity for purchasers to exercise their own judgment, no allowance whatever will be made."

(*l*) By the prompt day is understood the day for payment on sales of goods not payable by bills, which varies in different trades.

(*m*) Sometimes it is said:—

"No allowance will be made upon any goods, by reason of damage or otherwise, that shall remain in the warehouse after prompt day. The buyers shall be at liberty to have the packages opened at their own charge, previously to the prompt day; and if any goods be damaged (unless as described in the catalogue) or any pieces be wanting, the buyers shall have and accept such allowance as two or more brokers shall deem reasonable; but no allowance on any pretence whatever shall be made on any goods bought at this sale, after the same have been taken away."

(*n*) If the price of any of the lots be £10 or upwards, the sale comes

2. The buyers to declare their names and residences, and deposit 10 *per cent.* on the computed value of each lot, if required; the remainder of, or all, the purchase-money, with one shilling per lot for lot money, payable to the brokers at the time an order for delivery is given.

3. The goods to be paid for on or before the prompt of fourteen days, either in money, deducting six months' discount at the rate of five *per cent. per annum* (or the Bank of England rate on the day of sale, if above five *per cent. per annum*), or by such bills as the sellers may approve of, due at or within six months from the day of sale.

4. The goods to be received as and where they lie, at the buyers' expense, with all faults and defects, and without any allowance for error in description—the timber and logs according to the rased contents, and other goods as they may rise from the piles—the dimensions, when given, being according to the dock returns, and the quality, when given, according to the shippers' assortment or designation, unless otherwise specially described.—Any rent incurred after four weeks to be paid by the buyers of the respective lots.

5. Fourteen days from the date of the issue of the delivery order will be allowed for rent and cash payment on any lot that may not be ready for delivery on or within the prompt.

6. In default of compliance with the above conditions, the deposit-money, if any received, to be forfeited to the owners of the goods, and the purchasers liable to them for all loss and charges attendant upon a re-sale, either by private contract or public auction.

7. All goods sold at this sale to be at the risk of the sellers in respect of fire until the expiration of the prompt; in the event of non-delivery by loss from fire, the contract for such portion to be void, and the deposit, if any paid, to be returned.

X.

CONDITIONS OF SALE IN USE AT THE WOOL EXCHANGE.

1. The highest bidder to be the purchaser; and if any dispute arise between the bidders for any lot, it shall be decided by the broker, unless one of the claimants will advance. In that case the lot shall be put up again.

2. The goods to be weighed off by the warehouse-keepers, and taken away by the buyers at their own expense within fourteen days, with all faults and defects of whatever kind (including defect or error of description). One invoice to be rendered to each buyer for

within the Statute of Frauds and requires for the completion of the contract a delivery, part payment or memorandum in writing. The usual mode of completing a commercial sale is by an entry in the "broker's book" and the delivery of "bought and sold notes."

the whole amount of his purchases in this day's sale, and delivery to be given not later than the seventh day after the day of sale, upon payment of the invoice in full, or, if the same be not then ready, of an estimated equivalent sum in cash or Bank of England notes without discount.

3. The goods to be free of rent and at the risk of the vendors from fire, without reference to any payment that may have been made by the buyer to the brokers, until 6 o'clock p.m. of the third day from the expiration of the prompt, unless delivered from the warehouses or transferred for re-housing in the books of the warehouse-keepers.

4. The buyers to pay the broker one shilling per lot, and to deposit £25 *per cent.* (if required) at any time during or after the sale.

5. And if any lot or lots remain uncleared after the expiration of the said fourteen days, the before-mentioned deposit to be absolutely forfeited, and the buyer be further subject to all loss and charges that may accrue on the re-sale thereof, which it shall be at the option of the broker to effect either by public sale or private contract.

XI.

CONDITIONS OF SALE EMPLOYED IN THE WHOLESALE TEA-TRADE.

1. The highest bidder to be the purchaser, and any dispute that may arise to be settled by the selling broker.

2. Brokers to declare, in writing, their principals, within two days after purchase, or be held responsible; and those who may execute orders at this sale for parties not resident in London, shall produce a known agent here, who shall undertake to complete the contract; in failure of which the broker so buying shall be held responsible; and if any broker shall purchase for any person or persons under age, he shall be held responsible. In the case of teas sold for cash, the buying broker to be held responsible.

3. The buyer to pay the following deposit, namely, £1 per chest, at the time of sale, if demanded, or on the Saturday following the day of sale, or on the delivery of the weight notes; and the remainder of the purchase-money to be paid on or before . Interest at the rate of £5 *per cent. per annum* will be allowed on payment of the deposit, and on the remainder from the day of payment to the prompt day.

4. The weight notes to be ready for delivery within seven working days from the date of sale, or the buyer to have the option of refusing to accept such lot or lots for which he cannot obtain the weight notes, upon giving a declaration to that effect to the selling broker at the expiration of the said seven days. Missing packages, if not more than 5 *per cent.*, are exempted from this condition, and are to be taken by the buyer at the original price and prompt, if tendered within fourteen working days from date of contract.

5. No allowance will be made on account of any damage, rubbish, false package or unequal goodness found or alleged to be found, after the goods have been taken from the warehouses.

6. All teas sold at this sale to be at the risk of the sellers until the prompt day, unless paid for previously, but only to the extent of market value. In the event of non-delivery by loss from fire, the contract for such portion to be void, and the deposit paid to be returned. Rent to commence from the prompt day.

7. Lot money to the selling broker as usual.

8. If any buyer shall fail to comply with the above conditions, the vendors shall be at liberty to re-sell the teas, either by public or private sale, the deficiency, if any, with interest of money, from the prompt day, warehouse rent and all other charges and damages of every kind, to be chargeable to such defaulter and be recoverable against him at law.

VI. RESERVED BIDDINGS.

Appoint- I, A. B., owner of the estate, intended to be put up to sale
ment of a by auction by at on , appoint C. D. to bid
person to at such sale for my use and behoof, up to the reserved price of
bid for the £ .
vendor.

Dated this day of , 18 .

A. B.

I, the above-named C. D., consent to bid at the above-mentioned sale for the use and behoof of the above-named A. B., according to the above appointment.

Dated this day of , 18 .

C. D.

VII. AGREEMENTS (a).

1.

On sale by MEMORANDUM.—At the sale by auction held this day of
, 18 , of the property described in the above particulars,

(a) Auctioneers must be careful lest they incur penalties under section 60 of the Stamp Act, 1870; see *post*, p. 410. As to stamps, see *ante*, pp. 166,

, of , was declared the purchaser of the said pro- auction (b);
 perty, subject to the above conditions, at the price of £ ; and to be
 he has paid the sum of £ , as a deposit and in part payment annexed
 of the purchase-money, to , on behalf of , the vendor; to the par-
 and he hereby agrees to complete the purchase in accordance with ticulars
 the said conditions; and the said acknowledges the receipt and con-
 of the said deposit, and, as agent for the vendor, confirms the sale. ditions (c).

[Purchaser's signature.]

[Auctioneer's (or vendor's solicitor's) signature, adding for the
 vendor (d).]

	£	s.	d.
Purchase-money			
Deposit			
Balance	£		

2.

MEMORANDUM.—At the sale by auction this day of the property Another
 comprised in the within particulars , of , was the form; for
 highest bidder for, and was declared the purchaser of, the said pro- endorse-
 perty, subject to the within conditions, at the price of £ ; ment on
 and he has paid the sum of £ , as a deposit and in part pay- the par-
 ment of the purchase-money, to , on behalf of , the ticulars
 vendor; and he and the said vendor agree to complete the purchase and con-
 and sale in all respects in accordance with the said conditions. ditions.

Dated this day of , 18 .

[Signatures.]

	£	s.	d.
Purchase-money			
Deposit			
Balance	£		

et seq., and *post*, pp. 402, *et seq.* When an estate is sold in small lots, the
 expense of purchase-agreements and the risk of litigation attendant upon
 them may be saved by the execution, on the spot, of conveyances prepared
 beforehand, with blanks for the names of the purchasers. In such a case, an
 opportunity of previously perusing the proposed form of conveyance should
 be afforded to intending bidders.

(b) See also forms on pp. 309 and 315, *ante*.

(c) See *ante*, p. 89.

(d) Two copies will be signed, one to be kept by each party.

3.

MEMORANDUM.

Another form ; to be annexed to or endorsed on the particulars and conditions.

I, _____, of _____, hereby acknowledge that I have this day purchased the property described in the above [or within] particulars, subject to the above [or within] conditions, at the price of £ _____, and have paid to _____ the sum of £ _____, by way of deposit and in part payment of the purchase-money ; and I hereby agree to complete the purchase in accordance with the said conditions.

As witness my hand this _____ day of _____, 18 ____.

[Purchaser's signature.]

£ s. d.

Purchase-money

Deposit paid

Balance due £ _____

As agents for the vendor, we ratify the sale ; and, as auctioneers, we acknowledge the receipt of the deposit.

[Auctioneers' signature.]

4.

On a letting by auction (e).

MEMORANDUM that _____ of _____, &c., is declared the highest bidder for, and renter of, the premises described in the above [or within] particulars, at the annual rent of £ _____, at which rent _____ of _____, the landlord of the said premises, agrees to let the same to the said _____, according to the above [or within] conditions ; and the said _____ agrees to take the said premises at the said rent, according to the said conditions, which, on his part, he agrees to perform.

Dated this _____ day of _____, 18 ____.

[Signatures] (f).

Tolls.

(e) To be annexed to or endorsed on the particulars and conditions.

(f) For a letting of tolls, the following memorandum has been suggested (see Bateman's General Turnpike Acts, 278) :—

“ At a meeting of the trustees [or commissioners] of the turnpike roads under an act passed in the _____ year of the reign of his Majesty King _____ for [State the title of the act], held at _____, the _____ day of _____, 18 ____, by public notice and advertisement duly given, for the purpose of letting to farm the tolls of the several gates erected upon the said turnpike roads, in the manner directed by an act passed in the third year of the reign of his Majesty King George the Fourth, and another act passed in the fourth year of the reign of his said Majesty, for regulating turnpike

5.

BE IT REMEMBERED that _____, of _____, &c., hereby agrees On sale by to sell, and _____ of _____, &c., to purchase, the property com- private prised in [lot _____ of] the above [or within] written particulars, contract, at the price of £ _____, subject to the above [or within] written subject to conditions, so far as the same are applicable to a sale by private conditions contract [and to the said lot]; and that the said [purchaser] has paid prepared into the hands of the said [vendedor] the sum of £ _____, by way of for an deposit, and in part payment of the purchase-money. auction-sale (g).

Dated this _____ day of _____, 18 _____.

[Signatures.]

6.

MEMORANDUM of an agreement made this _____ day of _____, Another 18 _____, between _____, of _____, &c. (hereinafter described as the form; not referring to the

roads [Then follow the conditions of letting, see pp. 323—328, ante], E. F., of _____, having become the highest or last bidder for the above-men- conditions. tioned tolls [or, the first lot, &c.], and duly declared the farmer or renter of the same, at the sum of £ _____, for [one] year from the _____ day of _____, and having produced G. H., of _____, and I. K., of _____, as the sureties for the purpose above-mentioned, the trustees [or, commis- sioners] of the said turnpike road, in pursuance of the power and authority given to or vested in them in and by the above-mentioned acts or some or one of them, and of all other powers and authorities enabling them in that behalf, have contracted and agreed, and do hereby contract and agree with the said E. F. to let, and the said E. F. doth hereby agree to take, the said tolls, and all and every the said gates [comprised in lot 1, &c.], for the term of [one] year, from the _____ day of _____, at the yearly rent of £ _____, payable as aforesaid, and under and subject to the conditions, stipulations and agreements hereinbefore contained. And the said E. F., as farmer or renter of the said tolls, and the said G. H. and I. K., as his sureties, do hereby jointly and severally promise, undertake and agree to and with the trustees [or, commissioners] of the said turnpike road, that he, the said E. F., his executors or administrators, shall and will well and truly pay or cause to be paid the said yearly rent or sum of £ _____, at the times and in the proportions and manner hereinbefore limited and appointed for that purpose, and perform, fulfil and keep all and singular the conditions, restric- tions and agreements hereinbefore contained, and which, on the part of the highest or last bidder, farmer or renter of the said tolls are or ought to be performed.

Witness the hands of A. B. and C. D., two of the trustees [or commis- sioners] of the said turnpike road, and of the said E. F., G. H. and I. K., the day and year and at the place first above written.

A. B. E. F. I. K.
C. D. G. H.

Lettings of tolls are gradually becoming rare, as the different turnpike trusts expire and are not renewed.

(g) To be annexed to or endorsed on the particulars and conditions pre- pared for the sale by auction.

vendor), of the one part, and _____, of _____, &c. (hereinafter described as the purchaser), of the other part.

1. (h) The vendor agrees to sell, and the purchaser to purchase, the [parcels], at or for the sum of £ _____, and under and subject to the terms and conditions hereinafter expressed.

2. At or immediately after the execution hereof, the purchaser shall pay to the vendor a deposit of £ _____ per cent. on the amount, and in part payment, of the purchase-money.

[Continue with so much of the conditions as is applicable to a sale by private contract.]

As witness their hands.

[Signatures.]

7.

Another
form.

MEMORANDUM OF AGREEMENT made this _____ day of _____, 18____, between A. V., of _____, &c. (hereinafter called the vendor), of the one part, and B. P., of _____, &c. (hereinafter called the purchaser), of the other part.

1. The vendor agrees to sell, and the purchaser to purchase, at the sum of £ _____ [and at the valuation hereinafter provided for], to be paid as follows (*State terms of payment*):

2. All (*Describe property sold, stating shortly the property, its tenure, situation, extent, occupation, term of tenancy, if let, and any incidental rights*).

3. Subject to the land-tax, now £ _____, the sewers-rate for the level of _____, the fines, heriots and quit-rents, the latter amounting to _____, in respect of the copyhold parts thereof, free rents, amounting to _____, and also [*other charges*], but free from any other charges or incumbrances.

4. An abstract of the title shall at the expense of the vendor be delivered to the purchaser within _____ days from the date hereof. The title shall commence with an indenture dated _____ and made between _____, being a conveyance on a sale.

5. The vendor shall not be bound to show any further title to any parts of the property which may have been heretofore glebe, and sold to redeem land-tax, than the conveyance thereof; nor to any parts formerly waste than the grant thereof by the lord of the manor; nor to any parts allotted under an inclosure act than the copy award; nor to show the lord's title to any parts formerly copyhold, and enfranchised (and as to any parts enfranchised under the Copyhold Acts, the same shall be deemed sold subject to the reservations of mines and minerals given by those acts); nor as to commonable

(h) In preparing a lengthy agreement it will generally be found convenient to number the clauses.

rights or rights of way further than by a statutory declaration of user for years; and all recitals and statements contained in any deed, will or other document dated twenty years or upwards before the date hereof shall be deemed conclusive evidence of the facts and matters therein recited and stated (i).

6. All objections to and requisitions on the title shall be delivered to the vendor or his solicitor within days after the delivery of the abstract, and all objections or requisitions not so delivered shall be deemed waived, notwithstanding any subsequent correspondence thereon.

7. If any objection or requisition shall be insisted upon which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty at any time, and although he may have endeavoured to remove or comply with such objection or requisition, to annul the sale, and, on receiving the abstract of title, he will then return to the purchaser the part of the purchase-money paid by him [with interest thereon at the rate of 4 *per cent. per annum*], and the sum of £ towards his expenses in the investigation of the title or otherwise; and this contract shall thereupon be void to all intents and purposes.

8. The purchaser shall take and pay for by valuation the fixtures specified in the inventory hereto annexed, the timber and other trees, down to and including those of the value of 1s., and the matters and things usually taken and paid for between incoming and outgoing tenants; and shall allow the year's corn and crops to be laid in the barns and stacked on the premises, and pay for threshing, and dressing and getting in the stacks, and carrying the corn to the place of delivery on sale, not exceeding the distance of, &c., and have the straw, chaff and colder arising therefrom, the vendor [or the present occupier] appointing the threshers, and having the use of the barns and barnyards up to, &c., for that purpose.

9. The vendor shall bear all outgoings [and keep the house and buildings insured in the sum of £] and be entitled to the rents and profits up to, &c., when the purchase is to be completed; and from and after that date the purchaser shall be entitled to the rents and profits; and on payment of the [remainder of the] purchase-money and the valuation-moneys under this agreement, the vendor shall execute to the purchaser an assurance of the property, such assurance to be prepared by and at the expense of the purchaser, and to be left by him for execution at not less than days before the said day of .

10. In case default shall be made in such payment, from whatever cause arising, the purchaser shall from the said day of next, as to the purchase-money, and from the date of the valuation, as to the valuation-money, pay interest at the rate of, &c. (k),

(i) If the expense of proving the title is to be borne equally by the parties, a clause to that effect should follow here.

(k) The rate, which as a rule is 5 *per cent.* on auction-sales, is generally 4 *per cent.* upon sales by private contract.

until the completion of the purchase and payment of the purchase and valuation-moneys.

11 (*l*). The title-deeds relating to property of the vendor not comprised within the present sale shall be retained by him, and (*m*) an acknowledgment of the purchaser's right to production and to delivery of copies of such deeds, and an undertaking for safe custody thereof, shall be given to the purchaser by the vendor (*n*).

12. Should there be any error in the above description, as to tenure, outgoings [nature of tenant's covenants] or otherwise, except as to the quantity of land, which [being taken from the tithe survey] shall be conclusive, the same shall not vitiate the contract, but a compensation shall be paid or allowed, as the case may require, and shall be settled by reference as hereinafter mentioned.

13. All valuations and matters of reference under this contract shall be made by or referred to two referees, one to be chosen by each party, or by the umpire of such two referees, and on neglect of either party to name a referee within seven days after notice in writing to do so, the decision of the referee appointed by the other party to be binding. And in case of the referees not agreeing on an umpire, the same to be appointed by Mr.

14. The expense of this agreement is to be borne equally by the vendor and the purchaser.

As witness the hands of the said parties, the day and year first above written.

[Signatures.]

8.

On sale of freehold by private contract without special conditions (*o*). MEMORANDUM that it is agreed this day of , 18 , between A. B., of , [vendor], of the one part, and C. D., of , [purchaser] of the other part, as follows, that is to say :

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) to purchase, the fee simple in possession, free from incumbrances, of all, &c. [parcels], at or for the sum of £ , [of which £ has been paid by way of deposit at or before the execution of these presents, and the residue is] to be paid on the day of next, at the office of Mr. , , at which time and place the purchase shall be completed.

(*l*) See Dav. Conc. Prec. 104.

(*m*) See Conveyancing and Law of Property Act, 1881, s. 9.

(*n*) If the vendor is a trustee or mortgagee he will not give an undertaking for safe custody.

(*o*) With slight alterations, this form is also applicable to the sale of a copyhold estate.

An auctioneer should only draw an agreement of this kind where his principal has been advised that no special conditions are required.

2. The vendor will deliver to the purchaser's solicitor an abstract of his title to the property on or before the day of next, and the vendor, and all other necessary parties, if any, will, upon payment of the [residue of the] purchase-money, execute a proper assurance of the property to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at the said office not less than days before the said day of [day fixed for completion].

3. The purchaser shall be entitled to the possession [or the receipt of the rents and profits] of the property from the said day of next [day fixed for completion], and from that day all outgoings shall be discharged by the purchaser; and such outgoings shall, if necessary, be apportioned between the parties.

4. If from any cause whatever the purchase shall not be completed on the said day of , the purchaser shall pay to the vendor interest on the unpaid purchase-money at the rate of £ *per cent. per annum* from that day until the completion of the purchase.

5. Finally, if any error, misstatement or omission shall be discovered in the particulars, the same shall not annul the sale, but compensation shall be made in respect thereof by the vendor, or by the purchaser, as the case may require, the amount of such compensation to be settled, &c. [see *ante* p. 308, Form 12.]

As witness their hands.

[Signatures.]

9.

MEMORANDUM that it is agreed, this day of , On sale of 18 , between A. B., of , &c. (hereinafter called the vendor), leasehold of the one part, and C. D., of , &c. (hereinafter called the purchaser), of the other part, as follows, that is to say: by private contract

1. The vendor agrees to sell, and the purchaser to purchase, all that leasehold messuage, &c. (p), for the unexpired residue of a term of years created by a certain indenture dated, &c., and made, &c., free from all incumbrances, except the rent reserved by the said lease, and the covenants and conditions therein contained, and to be performed on the part of the lessee, at or for the sum of £ , to be paid, &c. (q.) without special conditions.

(p) If the fixtures, goodwill and stock are to be included, say:—

"And also the goodwill of the trade and business now carried on by the vendor, in and upon the said premises, as a , and all the fixtures, stock-in-trade and articles now affixed to or being in or upon the same, and more particularly described in the schedule hereunder written."

(q) If the fixtures, &c., are to be taken at a valuation, omit the mention of them above, and say here:—

"And the vendor also agrees to sell, and the purchaser to purchase [all the

2. The vendor will, at his own expense, deliver to the purchaser an abstract of the said indenture of lease, and the subsequent title to the said premises as leasehold; and the vendor and all other necessary parties, if any, will, on or before the day of , upon payment of the said purchase-money, execute a proper assignment of the said premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left by him at the office aforesaid not less than days before the said day of .

[3—5. See last precedent.]

As witness, &c.

[Signatures.]

10.

To grant a lease for a term of years (r). MEMORANDUM of an agreement made this day of , 18 , between , of , &c. [intended lessor], of the one part, and , of , &c. [intended lessee], of the other part. The said A. B. agrees to let, and the said C. D. to take, all that, &c. [parcels], with the , for the term of years, from the day of , at the yearly rent, clear of all existing and future taxes, rates and outgoings, of £ , to be payable by four equal payments, on the day of , the

fixtures, articles and things, now upon, in or annexed to the said premises, which, as between landlord and tenant, would be deemed to belong to the tenant or occupier of the said premises] [and all the household furniture, utensils and things now in or upon the said premises] [and all the stock-in-trade now upon the said premises], at and for such sum of money as the same shall be valued and appraised at by [N. N. and M. M. or] two appraisers, one to be chosen by each of the said parties, or in case of disagreement between them, &c." [See p. 308, Form 12.]

If the purchase-money is to be paid by instalments, say:—

"And the purchaser agrees that he will pay the said sum of £ [and the amount at which the said fixtures, &c., shall be valued as aforesaid] in manner following, that is to say, the sum of £ , part thereof, on the said day of , and, on the possession of the said premises being delivered up to him, the sum of £ , other part thereof, on the day of , in the year, &c. [as the case may be]; and the residue of the said sum of £ [and of the said amount at which the said fixtures, &c., shall be valued as aforesaid] on the day of , in the year 18 ."

(r) In agreements for agricultural tenancies, it must now be considered whether the provisions of the Agricultural Holdings Act, 1875 (38 & 39 Vict. c. 92), are to apply to the tenancy or not, and in the latter case a provision under s. 56, excluding either partially or wholly the application of the act, must be added; Dav. Conc. Prec. 12th ed. 91.

day of _____, the _____ day of _____, and the _____ day of _____, in every year; the first of such payments to be made on the _____ day of _____ next.

The said A. B., his heirs or assigns (hereinafter called the lessor), will, on the request of the said C. D., his executors, administrators or assigns (hereinafter called the lessee), execute a proper lease of the said premises to the said lessee, for the term and at the rent aforesaid; and the said lease shall contain covenants on the part of the lessee for payment of the said net yearly rent, &c. [*For covenants and provisos, see conditions of sale on a letting by auction, ante, pp. 323 et seq.*]

The lessee shall duly execute and deliver to the lessor a counterpart of the said lease; and the said lease and counterpart shall be prepared by the solicitor to the lessor; and the expenses of preparing and executing this agreement and the said lease and counterpart, and all other incidental expenses, shall be paid by [the lessor and] the lessee [in equal shares].

Finally, until the execution of the said lease, the said premises shall be held by the lessee at the rent aforesaid, and subject to the covenants and conditions to be contained in the said lease as aforesaid, so far as the rules of law will permit.

As witness, &c.

[Signatures.]

11.

MEMORANDUM of an agreement made this _____ day of _____, Another 18____, between A. B., of _____, &c. (who, and whose heirs and assigns, are hereinafter described as the *lessor*) [or A. B., as agent of &c.], of the one part, and C. D., of _____, &c. (who, and whose executors, administrators and assigns are hereinafter described as the *lessee*), of the other part.

1. (a) The lessor agrees to grant to the lessee, who agrees to accept of him, a lease of the mansion or dwelling-house called, &c., situate at, &c., with the buildings, gardens, grounds and meadow or pasture lands, containing together _____ acres, or thereabouts, together with the use of the fixtures therein.

(b) But with reservation to the lessor of the timber and other like trees, and the right to cut and remove the same.

(c) And also of the right of entry for the lessor and the lessor's friends and acquaintance for sporting, and the right to enter to view the state of repairs, or for any other reasonable cause.

(d) To hold for the term of _____ years from, &c. [subject to the right of determination hereinafter contained].

(e) At the rent of £ _____ *per annum*, payable [half-yearly] on, &c., and the first payment to be made on, &c.

2. The lease to contain all usual and necessary covenants, and in particular the following covenants on the part of the lessee :—

- (a) For payment of rent without deduction.
- (b) To pay rates and taxes (save property-tax) and tithe rent-charge.
- (c) To repair generally.
- (d) To paint externally in the year, and each succeeding third year, and internally in the year, and each succeeding th year [and paper once during the demise, and also to whitewash and colour once in every years].
- (e) To insure in £ in joint names, with power to lessor to do so in default and charge and recover payments as rent.
- (f) To keep gardens and pleasure-grounds in proper order.
- (g) To preserve fruit-trees, shrubs and plants, and replace those dying.
- (h) To keep meadow-land properly manured and managed.
- (i) To consume hay and manure on the premises.
- (j) To leave last year's hay and manure, being paid for same by valuation.
- (k) To leave premises at end of term in repair, with fixtures in proper state, being allowed by valuation for added fixtures, as mentioned in lessor's covenants.
- (l) That lessor may enter and view repairs wanted, or for other reasonable cause; and to repair within three months after notice.
- (m) Not to cut down or injure timber or other trees, and to pay £ a load, besides value, for breach.
- (n) Not to break up meadow-land, with penalty-rent of £10 per acre for breach.
- (o) Not to assign or underlet without consent in writing [*qualification as to offer of responsible assignee or tenant*].

3. The lease to contain the following covenants on the part of the lessor :—

- (a) The usual covenant for quiet enjoyment.
- (b) To pay by valuation for such fixtures as may be added by tenant, to amount of £ [and additions to buildings made by lessee with consent in writing, at value if removed].
- (c) Also to take the last year's hay and manure by valuation.

4. The lease is also to contain the following provisos :—

- (a) For re-entry on non-payment of rent for days [though not formally demanded], or on lessee becoming bankrupt, or assigning for benefit of creditors, or on breach or non-observance of covenants (s).

(s) Under an agreement for a lease, to contain "all usual and customary clauses," the landlord is not, it seems, entitled to have inserted in the lease

- (b) Empowering the [lessor or] lessee to determine the lease at end of the first years, on giving six months' notice [and also paying the amount of half a year's rent].
- (c) For leaving disputes to arbitration.

5. The lease and counterpart to be prepared by the lessor's solicitor, at the expense of the [lessor and] lessee [in equal shares].

As witness the hands of the said parties the day and year first above written.

A. B.

[Or [lessor], by _____, his agent,
C. D. (t).

12.

MEMORANDUM of an agreement made this _____ day of _____, To let from 18____, between A. B., of, &c. [landlord], of the one part, and C. D., of, _____ year to &c. [tenant], of the other part.

The said A. B. agrees to let, and the said C. D. to take, from the day of instant, for one year, and afterwards for another year, and so from year to year, until one of the said parties shall determine the demise at the end of the first or any subsequent year by giving to the other party not less than calendar months' notice in writing, all that [parcels] at and under the yearly rent or sum of £ sterling, the same to be paid [half-yearly on the day of and the day of], and the first such payment to be made on the day of next; which said rent the said C. D. agrees to pay accordingly, free and clear of all deductions whatsoever; and the said C. D. agrees to pay all rates, taxes and other outgoings, present and future, payable in respect of the said premises (u) (except the land-tax and landlords'

a proviso for re-entry on breach of any of the covenants by the lessee, or otherwise than on non-payment of rent; *Hodgkinson v. Crouce*, L. R. 10 Ch. 622.

(t) The following stipulations may be in some cases desirable:—

- (a) Payment in advance of a certain portion of the rent.
- (b) Tenant to yearly expend a specified sum in repairs, and deliver surveyor's certificate.
- (c) To paint and paper in specified manner.
- (d) Not to allow sale by auction on the premises.
- (e) To yearly deliver surveyor's certificate of premises being in repair.
- (f) On lease including furniture, for apportionment of rent, in case of furniture and house, &c., becoming the property of different parties.

(*) See Dav. Conc. Proc. 96, 274.

property-tax, if any), and to keep the said premises in good and sufficient repair during the said demise. [*Add such other stipulations as may be agreed upon*].

As witness, &c.

[*Signatures*].

13.

To let a house or apartments for a less term than a year. WHEREAS A. B., of, &c., intends to become the tenant of C. D., of, &c., of &c. [*parcels*]. It is agreed that the following are the terms and conditions on which the said A. B. shall hold the same. The rent is to be at the rate of £ *per annum*, payable quarterly [*or monthly, or weekly*], on the following days, &c. [*or on the first day of every month, or on Wednesday in every week*], clear of all deductions.

The tenancy is to be quarterly [*or monthly, or weekly*], determinable by a quarter's [*or month's, or week's*] notice, to be given at any time by either tenant or landlord. [*Add other stipulations, if necessary.*]

14.

For a building lease (v).

MEMORANDUM, &c.

The said C. D. agrees that he will forthwith, at his own expense, well and substantially build and cover in, upon the piece of ground at S., in the said county, delineated in the plan hereunto annexed,

(v) Where a building lease for the erection of several houses is to be granted, considerable inconvenience is often experienced from the entire ground rent affecting all the houses, and it would be desirable in such a case to insert a provision that, if required by the lessee, the lessor will execute several leases of the respective houses at certain named rents, such rents amounting in the aggregate to such an additional sum as will fairly repay the lessor for the trouble and expense of collecting the money in smaller sums. As a general rule, the substitution of guineas for pounds would fairly mark the difference.

The clause might be to the following effect:—"It is further agreed that, as and when the said C. D. shall erect and complete one of the said messuages, &c., in manner aforesaid, the said A. B. will, if required by him, grant a lease thereof with one [half] of the said land, including the site of such messuage, &c., unto such person as the said C. D. shall in that respect nominate, and under the same terms, covenants and conditions as hereinbefore mentioned, but at the increased rent of 1s. *per annum* on every pound or part of a pound contained in one equal [half] of the said ground rent; and it is expressly declared that any such lease shall not, as regards the residue of the land and premises agreed to be let, affect the right of the said A. B. to declare the present agreement void on default by the said C. D. as aforesaid."

[two] second-rate messuages or tenements, with proper outbuildings; and that the same shall be built and completed under the inspection and to the approbation of the surveyor of the said A. B., and conformably in every respect to the plan and elevation also hereunto annexed, with good and substantial materials, &c. [as the case may be].

And the said A. B. agrees that, when and so soon as the said messuages or tenements shall be built and covered in, the areas thereof formed, and the foot and carriage ways properly finished, he the said A. B. will execute a proper lease of the said piece of ground, and the said messuages or tenements and buildings so to be erected thereon as aforesaid, with the appurtenances, to the said C. D., his executors, administrators or assigns, for the term of _____ years, from the _____ day of _____, at the yearly rent, &c. [as on p. 350]; and that the said lease shall contain all usual and necessary covenants, and particularly, &c.

And the said C. D. agrees to execute a counterpart, &c.

And it is agreed, that, in case the said messuages or tenements shall not be built and completed ready for habitation before or on the _____ day of _____, the said A. B. shall be at liberty to re-enter and take possession of the said premises, and declare the present agreement void, in which case the same shall be void accordingly to all intents and purposes.

It is further agreed that the said A. B. is not to be required to show his title to the land agreed to be leased as aforesaid.

As witness the hands of the said parties, the day and year first above written.

[Signatures.]

15.

MEMORANDUM of an agreement made this _____ day of _____, 18____, For a
between A. B., of &c. [intending mortgagor], of the one part, and loan on
C. D., of &c. [intending mortgagee], of the other part. mortgage.

1. The said C. D. shall lend to the said A. B. the sum of £_____,
at £4 per cent. per annum interest, payable half-yearly, on mortgage
of the property described in the schedule hereto; provided that
P. N., of _____, who shall forthwith value the property, shall
have reported the security to be sufficient; provided also that
the said A. B. shall have deduced a good marketable title to the
property.

2. The said A. B. shall execute by way of security such as-
surance or assurances of the property as the said C. D. shall
reasonably require [or as the counsel of the said C. D. shall deem
proper to prepare.]

3. The loan and mortgage shall be completed on the _____ day
of _____ next. Time shall be of the essence of the contract.

4. All expenses of and incidental to this agreement and the negotiation for the same, the loan and the mortgage shall be paid by the said A. B., unless the mortgage shall not be completed through the wilful default of the said C. D.

As witness, &c.

[Signatures.]

SCHEDULE.

16.

For a mortgage. MEMORANDUM of an agreement made this day of , 18 , between A. B., of, &c. [*mortgagor*], of the one part, and C. D., of, &c. [*mortgagee*], of the other part. In consideration of the sum of £ , this day advanced by the said C. D. to the said A. B., the said A. B. hereby agrees to repay the said sum on the day of next (*w*), with interest, from this day, at the rate of £ per cent. per annum; and that, if the said sum of £ , or any part thereof, shall not have been paid to the said C. D. on or before the said day of next, the said A. B. shall pay interest on the amount remaining unpaid, at the rate aforesaid, by equal half-yearly payments, and will immediately, at the request of the said C. D., but at the proper costs and charges of the said A. B., execute a good and sufficient mortgage in fee simple, free from incumbrances, of [the freehold (or leasehold) estate known as , situate at , and belonging to the said A. B. (the title-deeds whereof have this day been deposited in the hands of the said C. D.)], for the better securing such principal sum remaining unpaid, with interest at the rate aforesaid. And until such mortgage shall be executed, the said premises shall remain a security for, and be charged with the payment of, the said sum of £ , and interest as aforesaid.

[See clause 4, *supra*.]

As witness the hands of the said parties.

[Signatures.]

17.

To secure future advances. I hereby agree to execute to Mr. A. B., on request, a mortgage in fee of, &c., for securing all sums he may hereafter advance to me, with interest thereon payable, from the times of the respective advances, at the rate of &c., payable &c.; such mortgage to be prepared by his solicitor at my expense.

[Signature.]

(w) Six calendar months from the date of the agreement.

18.

MEMORANDUM. A. B., of, &c., has this day advanced to me, Acknowledgment
C. D., of, &c., the sum of £ ; and I have this day placed in his possession the title-deeds specified in the schedule hereto, by way of equitable mortgage of the property to which the said title-deeds relate, for securing the repayment of the said sum of £ , by way of
with interest from this day at the rate of £ per cent. per annum, equitable
payable half-yearly. mortgage

Dated this day of , 18 .

A. B.

Schedule.

19.

MEMORANDUM.

Whereas, by a contract entered into the day of , Memo-
A. B. agreed to sell, and C. D. to purchase, all, &c. [as in the original randum on
contract]. And whereas the said C. D. is about to enter into the purchaser
possession of the said premises, although the conveyance shall not being let
have been executed. Be it remembered, that such taking possession into pos-
session shall not be deemed an acceptance of the title, or an abandonment session
on the part of the said C. D. of his right to have all valid objections before ac-
to the title fully removed. ceptance
of title.

As witness, &c.

Dated this day of , 18 .

[Signatures.]

20.

I have this day bought the above-named ship and stores on the Agreement
above-mentioned conditions of sale for the sum of £ . to purchase
Dated this day of , 18 . ship.

[Purchaser's signature.] (y)

21.

MEMORANDUM of an agreement made this day of , Agreement
18 , between A. B., of, &c., of the one part, and C. D., of, &c. of for putting
the other part. off a
business.

The said A. B. agrees that, in consideration of the sum of

(x) Where title deeds are deposited by way of equitable mortgage, a memorandum merely stating the purpose for which they are deposited is not an agreement for a mortgage, and does not require a stamp; *Meek v. Bayliss*, 31 L. J. Ch. 448; decided on 13 & 14 Vict. c. 97; cf. 33 & 34 Vict. c. 97, s. 105.

(y) As to stamp, see *ante*, p. 169.

£ and of the valuation-money hereinafter mentioned, the said A. B. shall and will, on the day of , relinquish to and in favour of the said C. D. the business of [lately used and carried on by W. A., her late husband, and] now carried on by the said A. B., at aforesaid, and the goodwill thereof, and transfer to the said C. D. the stock-in-trade in and belonging to the said business, and the shop-fixtures and other fixtures, implements and utensils of trade in and upon the premises of the said A. B. at aforesaid; and also execute to the said C. D. an assignment of the lease which the said A. B. now holds, of her dwelling-house, shop and premises at aforesaid, subject to the rents and covenants therein reserved and contained. And it is agreed that the said stock, fixtures, implements and utensils shall, before the day of , be valued and appraised by L. M. And the said C. D. agrees that he will accept the said business, goodwill, lease and premises, and pay to the said A. B. for the same the sum of , and also such sum as the said stock, fixtures, implements and utensils shall be valued and appraised at by the said L. M. as aforesaid, in manner following, that is to say, the sum of on the day of , and the remainder on the day of , &c. And the said A. B. agrees that, on her relinquishment of the said business to the said C. D. as aforesaid, she will thenceforth endeavour to induce her customers to deal with the said C. D., and will not within the space of years from the date hereof directly or indirectly carry on the said business, or any similar business, within miles of aforesaid, and will forthwith after breach of this stipulation pay to the said C. D. the sum of £ as ascertained and liquidated damages. And it is agreed that, the expense of preparing this agreement, and of making the said valuation, shall be borne and paid by the said A. B. and C. D. in equal shares.

As witness their hands.

[Signatures.]

VIII. AUCTIONEER'S COMMISSION, &c.

1. SCALE OF FEES (z).

Messrs. 's scale of terms.

a. Sales by Auction.

For sales A commission of £5 *per cent.* on the first £100, 2½ *per cent.* from
by auction thence to £5,000, 1½ *per cent.* from thence to £10,000, and £1 *per cent.*
in London; on all above.

(z) These are the usual terms of an eminent London firm of auction, land and estate agents.

When any sale amounts to £2,000 and upwards, the commission to include all expenses (except for plans, lithographic views and travelling).

When any sale amounts to £1,500, and less than £2,000, the commission to include half the expenses (except for plans, views and travelling).

When a sale amounts to less than £1,500, the expenses in addition to the commission.

In case of no sale being effected, a moderate fee (dependent upon the nature of the property) in addition to the costs out of pocket.

An estimate of the probable cost of a sale given, when required.

For sales of estates and house property held in the country, in the most cases as above. country ;

On sales of furniture, live and dead stock, and general chattels, a commission of £5 *per cent.*, and costs out of pocket. of furniture, &c.

b. Sales and Lettings by Private Contract.

A fee of £1 1s. on the entry of particulars of each property on the books, and no other charge (except for advertisements, or other expenses for which special instructions may be given), unless a sale be made, or a tenant obtained, by Messrs. 's instrumentality or introduction, when credit is given for the entrance fee, and a charge made in accordance with the following scale of commission : For selling and letting estates and houses by private contract.

For selling by private contract freehold and copyhold property, or leaseholds held at ground rents :

On the first £100 £5 *per cent.* (in no case less than £5).

From £100 to £5,000 £5 *per cent.* on the first £100, and £2½ *per cent.* on the remainder.

Above £5,000 £2½ *per cent.* on the first £5,000, £1½ *per cent.* from thence to £10,000, and £1 *per cent.* on the remainder. And in each case where timber, fixtures, furniture, tenant-right, stock or other effects are included in the sale, the amount agreed to be paid for the same (if without valuation) is added to the sum obtained for the property, and commission charged upon the gross amount. If a valuation be needed, a commission of £5 *per cent.* upon the first £200, and £2½ *per cent.* on the remainder, is charged, in addition to stamp and travelling expenses.

For letting estates or houses, or disposal of leases at rack rentals :

Unfurnished—On agreement for one, two or three years : £5 *per cent.* on one year's rent ; £5 *per cent.* on the premium ; and on the amount agreed to be paid for fixtures, furniture, tenant-right, stock or other effects (whether sold by valuation or otherwise), £5 *per cent.* on the first £200, and £2½ *per cent.* on the remainder.

Unfurnished—On lease or assignment of lease : On the first year's rent, £5 *per cent.* ; on the second year's rent, £2½ *per cent.* ; also on the premium for the lease or assignment, £5 *per cent.* on the first £500, and £2½ *per cent.* on the residue ; and on the amount agreed to be paid for fixtures, furniture, tenant-right, stock or other effects, £5

per cent. on the first £200, and £2½ *per cent.* on the residue. In either of these cases the valuation of the fixtures, furniture, tenant-right, stock or other effects is made without extra charge, except for travelling expenses, stamp, &c.

Furnished—£5 *per cent.* on the entire rental (not exceeding twelve months).

On letting building land, one year's standing ground rent.

On large estates (by special arrangement), one half-year's ground rent.

When a property is let to a tenant who afterwards becomes the purchaser, the commission on letting is allowed from the commission on the purchase-money then payable.

c. Valuations.

For valuations: Of fixtures, furniture, tenant-right, stock and other effects, £5 *per cent.* on the first £200, and £2 10s. *per cent.* on the residue; travelling expenses, stamp, &c., extra.

—of furniture, &c. Of timber, £5 *per cent.* on the first £500, and £2 10s. *per cent.* on the residue (in some cases £5 *per cent.* on the entire amount); travelling expenses, stamp, &c. extra.

—of timber; In railway and other compensation cases:

—in compensation cases.

Amount of Verdict or Award.	Fee.	Amount of Verdict or Award.	Fee.	Amount of Verdict or Award.	Fee.
£100	Gs. 5	£3,600	Gs. 31	£8,000	Gs. 53
200	7	3,800	32	8,200	54
300	9	4,000	33	8,400	55
400	11	4,200	34	8,600	56
500	13	4,400	35	8,800	57
600	14	4,600	36	9,000	58
700	15	4,800	37	9,200	59
800	16	5,000	38	9,400	60
900	17	5,200	39	9,600	61
1,000	18	5,400	40	9,800	62
1,200	19	5,600	41	10,000	63
1,400	20	5,800	42	11,000	68
1,600	21	6,000	43	12,000	73
1,800	22	6,200	44	13,000	78
2,000	23	6,400	45	14,000	83
2,200	24	6,600	46	15,000	88
2,400	25	6,800	47	16,000	93
2,600	26	7,000	48	17,000	98
2,800	27	7,200	49	18,000	103
3,000	28	7,400	50	19,000	108
3,200	29	7,600	51	20,000	113
3,400	30	7,800	52	Above this Special Arrangement.	

In addition to the above, £3 3s. per day for attendance before a jury or umpire, if in London, £5 5s., if in the country ; travelling expenses extra (a).

2. SCALE OF CHARGES APPROVED BY THE SURVEYORS' ASSOCIATION, THE SELECT SOCIETY OF AUCTIONEERS, AND THE COMMITTEE OF THE ESTATE EXCHANGE (b).

Valuations.

Commission on the amount of the valuation at the rate of one guinea *per cent.* on the first £1,000, half a guinea *per cent.* on the next £9,000, and quarter guinea *per cent.* on the residue.

In valuations for mortgage, if an advance is not made, one-third of the above charges ; the *minimum* fee to be five guineas.

Sales of property.

Under £500, 5 *per cent.* on £100, and 2½ *per cent.* on residue.

Between £500 and £2,000, 2½ *per cent.*

Between £2,000 and £5,000, 2½ *per cent.* on £2,000, and 2 *per cent.* on residue.

Between £5,000 and £10,000, 2 *per cent.* on the first £5,000, and 1½ *per cent.* on residue.

Above £10,000, 1½ *per cent.* on £10,000, 1 *per cent.* on the next £10,000, and ½ *per cent.* on the residue.

Purchases of property by private treaty.

One-half the fee charged on sales, to include valuation.

When more than one property has been reported upon, an extra charge to be made.

Timber.

Five *per cent.* on first £500, and 2½ *per cent.* on remainder of valuation.

Five *per cent.* on all timber set out and marked for sale, and sold.

Dilapidations.

Five *per cent.* on the amount, with a minimum fee of five guineas

Valuation of properties for rental.

Five *per cent.* on the first year's rent.

The above charges are exclusive of plans and disbursements.

(a) Owing to the great variety of circumstances under which they are required, surveys and specifications are generally made the subject of a special arrangement.

(b) The remaining scales of fees and charges, although strictly belonging to another place, are printed in this portion of the book for the reader's greater convenience of reference.

In respect of property taken under compulsory powers.

On amount of settlement, whether by verdict, award, or otherwise :

Amount.	Guineas.	Amount.	Guineas.	Amount.	Guineas.
£100	5	£3,400	30	£7,600	51
200	7	3,600	31	7,800	52
300	9	3,800	32	8,000	53
400	11	4,000	33	8,200	54
500	13	4,200	34	8,400	55
600	14	4,400	35	8,600	56
700	15	4,600	36	8,800	57
800	16	4,800	37	9,000	58
900	17	5,000	38	9,200	59
1,000	18	5,200	39	9,400	60
1,200	19	5,400	40	9,600	61
1,400	20	5,600	41	9,800	62
1,600	21	5,800	42	10,000	63
1,800	22	6,000	43	11,000	68
2,000	23	6,200	44	12,000	73
2,200	24	6,400	45	14,000	83
2,400	25	6,600	46	16,000	93
2,600	26	6,800	47	18,000	103
2,800	27	7,000	48	20,000	113
3,000	28	7,200	49	Beyond this	
3,200	29	7,400	50	¼-a-guinea per cent.	

The fee is exclusive of five guineas *per* day for attendance in the country, and three guineas in London.

Plans and disbursements extra.

3. COSTS AND FEES PAYABLE UNDER THE BANKRUPTCY ACT, 1869 (b).

(Subject to variation by the trustees, with the consent of the committee of inspection, or of the court, where there is no committee.)

Broker's allowance.

For inventory and valuation :	£	s.	d.
For the first £100	2	10	0
For the next £400, <i>per cent.</i>	1	5	0
All above	1	0	0
(This allowance to include all expenses, and any travelling within five miles of the court, and a fair copy of the inventory.)			
Beyond five miles, per mile one way	0	0	7

(b) Order of 1st January, 1870.

Auctioneer's charges, including all expenses of sale (c).

Sales by auction of goods, chattels and effects :

£10 per cent. on the first £100.

After, to	£1,000	£5	per cent.
After, to	£5,000	£2 10s.	per cent.
After, to	£10,000	£1 5s.	per cent.

If the above be sold by valuation, £2 10s. per cent. on the first £1,000, and £1 5s. per cent. beyond.

Sales by auction of estates, freehold, leasehold, &c. :

£5 per cent. on the first £300.

After, to	£1,000	£2 10s.	per cent.
After, to	£5,000	£1	per cent.
After, to	£10,000	10s.	per cent.

If the above be sold by valuation, half the above charges; and if not sold, the expenses to be paid, and fee to the auctioneer to be allowed as agreed with the trustee, or at the discretion of the taxing officer; or if bought in and subsequently sold by private contract by the negotiation of the auctioneer, half the above charges on sales by auction.

Farming stock £5 per cent. on the first £100, and £2 10s. on the remainder. When sold by valuation, half the above charges.

Costs of surveys, dilapidations and specifications.

From £2 to £5 in discretion of taxing officer.

Sales of stock by tender.

Not above £400	£4	per cent.
After, to £1,000	£3 10s.	per cent.
After, to £2,000	£2 10s.	per cent.
After, to £5,000	£2	per cent.
Above £5,000 and upwards	£1 15s.	per cent.

Expenses to be allowed, such as advertisements and printing, not exceeding £2, or at the discretion of the taxing officer.

(c) The allowances to auctioneers as witnesses in bankruptcy cases are: Auctioneers' allowances as witnesses. if resident in the town in which the court is held, £1 1s. (clerks, 10s. 6d.), if resident at a distance from the court, subsistence in these cases included: £1 1s. to £2 2s. (surveyors, £1 1s. to £3 3s.; clerks, 15s.) Travelling expenses are allowed to auctioneers at the rate of 7d. per mile, to their clerks at 5d. per mile, one way, where no railway is available, or as actually incurred, in the discretion of the taxing master. In a Chancery case, Wickens, V.-C., ruled that the proper allowance for an auctioneer and valuer, as witness, was two guineas a day, one guinea for his maintenance, and another for his loss of time and business, in addition to his first-class railway fare; *Wiltshire v. Marshall*, W. N. 1866, p. 80.

4. FEES FOR APPRAISEMENTS AND SALES OF GOODS TAKEN IN EXECUTION UNDER COUNTY COURT PROCESS (*d*).

Broker's and appraiser's fees.

For the appraisal of goods, whether by one broker or more—sixpence in the pound on the value of the goods appraised, over and above the stamp duty.

For the sale of goods, including advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of sale.

In all plaints for the recovery of debt or damages, all poundage, except where otherwise specified in this schedule, shall be estimated on the amount of the claim.

In replevins all poundage, except as aforesaid, shall be estimated on the amount of the alleged rent or damage, to be fixed by the registrar.

In plaints for the recovery of tenements, when the term has expired or been determined by notice, all poundage, except as aforesaid, shall be estimated on the amount of the weekly, monthly or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

If in any plaint for the recovery of tenements a claim be made for rent or mesne profits, an additional poundage shall be paid on the amount of such claim.

In plaints for the recovery of tenements for non-payment of rent all poundage, except as aforesaid, shall be estimated on the amount of the half-yearly rent of the tenement.

In every case where the poundage would, but for this rule, be estimated on an amount exceeding £20, it shall be estimated at £20 only.

In every case where the poundage cannot be estimated by any rule in this schedule, it shall be estimated on £20.

All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, he shall pay the difference, unless the reduction shall be caused by a set-off.

In cases of interpleader the judge may allow at the hearing the actual costs incurred by the high bailiff in keeping possession of the goods claimed, and no more.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant.

5. COSTS AND CHARGES ON DISTRESSES FOR SMALL RENTS AND
RATES (c).

	s.	d.
Levying distress	3	0
Man in possession, per day	2	6
Appraisement, whether by one broker or more, sixpence in the pound on the value of the goods.		
Stamp, the lawful amount thereof.		
All expenses of advertisements, if any such	10	0
Catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.		

IX. SALES BY THE COURT. (a)

1.

In the High Court of Justice,
Chancery Division.
[Name of judge.]

18 , [B. (b)]. No.

Affidavit as
to proposed
mode of
lotting,
and time
and place
of sale.

Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

I, X. Y., of [place of residence, and description or addition], make oath and say as follows:

1. I have for years last past been engaged in the business of an auctioneer and land and estate agent; and for years last past I have carried on such business at aforesaid; and I have had considerable experience in the mode of lotting and selling land and house property.

2. I know and am well acquainted with the estates situate at , in the county of , proposed to be sold in this action, and described in the paper writing marked A., now produced and shown to me.

3. On the day of , 18 , I went over the said estates, and made a careful survey thereof, for the purpose of forming

(c) See *ante*, p. 219.

(a) The following eight forms are inserted for the purpose of giving to the auctioneer a more thorough insight into the practice which obtains upon sales by the Court. They are taken from Daniell's Chancery Forms and Precedents, where a complete series of forms for use upon sales by the Court will be found (see 3rd ed. Nos. 1100 *et seq.*). For forms of advertisement, particulars and conditions of a sale by the Court, see *ante*, pp. 292, 294, 315.

(b) Initial of plaintiff's surname.

an opinion as to the best mode of dividing and allotting the said estates for the said sale thereof.

4. The said paper writing marked A. sets forth a true and correct description of the said estates, to the best of my knowledge and belief, and the mode in which, in my judgment and opinion, it will be desirable to lot and divide the same for the purposes of the said sale.

5. In my judgment and belief the said estates will be sold to the most advantage, and will be likely to realize the best prices, if the scheme of division and allotment set forth in the said paper writing marked A. be adopted.

6. The day of , 18 , at (five for six) of the clock in the evening, and the Hotel, at , in the county of , will be a desirable and convenient time and place for the said sale.

2.

Affidavit
of fitness of
proposed
auctioneer.

[Formal parts as in last form.]

1. I have for years last past known and been well acquainted with L. M., of [residence and addition], auctioneer and land and estate agent; and during all that time the said L. M. has carried on business as an auctioneer and land and estate agent at aforesaid [or as may be].

2. I have on several occasions employed the said L. M. as an auctioneer and land-valuer, and am also acquainted with several persons who are in the habit of employing him in that capacity, and he has invariably given entire satisfaction to me, and I believe also to such other persons.

3. The said L. M. is a person of respectability and integrity, and of considerable ability as an auctioneer and land and estate agent; and in my judgment he is a fit and proper person to be employed to sell the estates situate at , in the county of , proposed to be sold in this action.

3.

Affidavit as
to valuation
and
proposed
reserved
bidding.

[Formal parts as in Form 1, supra.]

1. I have carefully examined and surveyed the estates particularly described in the printed particulars of sale marked A., now produced and shown to me, in order to form an opinion as to the value thereof, and the amounts which the said estates ought to realize on the sale thereof advertised to take place on the day of , 18 .

2. I have, in the paper writing marked B., now produced and shown to me, set forth in the first column the number of the lots into which the said estates have been divided for the purposes of the said sale; and in the second column, opposite the numbers of the said

lots respectively, the full values of the said lots respectively; and in the third column, opposite the said numbers respectively, the amounts which, in my judgment and belief, should be fixed as the reserved biddings for the said lots respectively on the said sale (c).

4.

Mr. Justice
at Chambers.

[Short title of the action or matter, and reference to the record.]

Mr. L. M., the person appointed to sell the estates advertised for sale in this action [or matter] is requested to attend to the following directions:—

R. M., Chief Clerk.

Directions
to auc-
tioneer as

to sale in
several

lots, where
there are

reserved
biddings.

The sale is to be conducted in accordance with the accompanying printed particulars and conditions, signed by the Chief Clerk. This print is to be carefully preserved, and returned to the Judge's Chambers with the affidavit of the result of the sale.

The sale is to be subject to the reserved bidding specified in the accompanying note. This note is not to be opened till the time of sale. The reserved bids are not to be divulged to any person, either at, or at any time after, the sale.

In case there is no bidding for any lot equal to, or higher than, the reserved bid, the person appointed to sell is to declare that such lot is not sold, but has been bought in on account of the persons interested in, or entitled to, the property.

The accompanying bidding paper is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column, opposite the number of such lot. When, although there is a bidding, the lot is not sold, the words "not sold" are to be written in the third column. The purchasers are to sign their names in the third column, and any person who purchases as agent for another must so sign; otherwise he must be treated as the purchaser. The purchaser's address and quality are to be fully stated in the fourth column.

(c) E.g. :—

No. of Lot.	Value.	Proposed reserved bidding.
1	£2,000	£1,850
2	£500	£450

When the purchaser's signature is not plain, or initials are used, a note must be put at the foot of the bidding paper, as follows: "The name of the purchaser of lot is ."

5.

Note of the reserved biddings.

[Commence as in preceding form.]

The reserved biddings fixed by Mr. Justice , to which the sale in this action [or matter] is to be subject, are as follows, viz. :—

For Lot 1.	£800.
For Lot 2.	£250.
For Lot 3.	£300.
For Lot 4.	£700.
For Lot 5.	£650.
For Lot 6.	£710.

R. M., Chief Clerk.

6.

Bidding paper on a sale in several lots.

In the High Court of Justice,
Chancery Division.

B. (d).

[Short title of action or matter.]

This bidding paper, marked B., was produced and shown to L. M., and is the same as is referred to in his affidavit sworn this day of 18 , before me, E. F., a commissioner, &c. [or as may be].

We, whose names are hereunder subscribed, respectively bid at the sale by auction in the above action [or matter], on the day of

(d) See next precedent.

, 18 , the sums set opposite to our respective names for, and became the purchasers of, the respective lots specified in the particulars produced at such sale, the numbers of which are set opposite to our respective names, subject to the conditions also produced at such sale.

No. of Lot.	Amount of highest bidding.	Signatures of the Purchasers of the lots sold.	Purchasers' address and quality.
1	£900	Edward Thornton	Epping, Essex, Farmer.
2	£200	Not Sold.	
3	No bidding.		
4	No bidding.		
5	£500	Not Sold.	
6	£750	Arthur Cuthbertson, agent for T. E. Masson	Ilford, Essex, Esquire.

Note.—*The name of the purchaser of Lot 6 is Thomas Edward Masson.*

7.

In the High Court of Justice,
Chancery Division.

[Title of action or matter, and reference to the record.]

I, L. M., of *[residence and addition]*, the person appointed by the judge to whom this action *[or matter]* is attached to sell the estates comprised in the particulars hereinafter referred to, make oath and say as follows :—

1. I did, at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me and marked with the letter A., put up for sale by auction the estates described in such particulars ; and the

B B

Affidavit of
result of a
sale in
several
lots.

result of such sale is truly set forth in the bidding paper marked with the letter B. now produced and shown to me (e).

2. [*If any lots were sold say :*] The sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots the numbers of which are set forth in the first column, opposite to such respective sums ; and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for, and became the purchasers of, the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper, at the prices or sums set opposite to their respective names in the said second column thereof.

3. [*If any lots were bid for, but not sold, add :*] The several lots opposite to the numbers of which I have, in the third column of the said bidding paper, written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said judge.

4. [*If any lots were not bid for, add :*] No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. [*In every case, add :*] The said sale was conducted by me in a fair, open and candid manner, and according to the best of my skill and judgment.

6. [*If a deposit was paid, add :*] I have received the sums set forth in the fourth column of the schedule hereto, as deposits from the respective purchasers whose names are set forth in the second column of such schedule, opposite the said respective sums, in respect of their respective purchase-moneys, set forth in the third column of the said schedule, opposite such names, for the respective lots the numbers of which are set forth in the first column of the said schedule, opposite such respective names ; leaving due, in respect of the purchase-moneys set forth in the said third column, the respective sums set forth in the fifth column of the said schedule.

The schedule above referred to :—

No of Lot.	Name of Purchaser.	Amount of Purchase-money.	Amount of Deposit received.	Amount remaining due.
1	Edward Thornton	£ 900	£ 90	£ 810
6	Thomas Edward Masson	750	75	675
	Total . .	£1650	£165	£1485

Sworn, &c.

(e) See last precedent.

8.

In the High Court of Justice,
Chancery Division.

[*Title of the action or matter, and reference to the record.*]

In pursuance of the directions given to me by Mr. Justice I hereby certify that the result of the sale which has been made in pursuance of the judgment [*or order*] made in this action [*or matter*], dated the day of , 18 , is as follows :—

The real estates of A. B., the testator in the said judgment [*or order*], dated the day of , 18 , named, and thereby [*or as may be*] directed to be sold, have been offered for sale in six lots by public auction, with the approbation of the said judge, subject to a reserved bidding for each lot, fixed by the said judge, and according to certain particulars and conditions of sale; and the several persons named in the first column of the first schedule hereto were the highest bidders for, and they are allowed by the said judge to be the purchasers of, the respective lots set opposite to their respective names in the second column of the said first schedule, at the prices or sums set opposite to their respective names in the third column of the said first schedule.

The purchasers have paid the several sums set opposite their respective names in the fourth column of the said schedule, as deposits, to L. M., the person appointed by the said judge to receive the same, such sums being the amounts fixed by the said judge to be paid as deposits by the purchasers respectively at such sale; and the several sums set opposite the respective names of such purchasers in the fifth column of the said schedule remain due from the said purchasers respectively, as the balance of their respective purchase-moneys. The said several sums mentioned in the fourth column of the said schedule, which have been received by the said L. M., amount together to the sum of £165; which sum of £165 the said L. M. is, on or before the day of , 18 , to pay into court to the credit of [*&c., as in judgment or order directing the sale*].

The purchaser of the lot numbered 6 is T. E. M., a defendant in this action, an order dated the day of , 18 , having given him liberty to bid.

No person bid for either of the lots numbered 2 and 5 a price equal to, or higher than, the sum fixed as the reserved bidding; and therefore such lots were not sold at such auction.

No person bid for either of the lots numbered 3 and 4.

The particulars of the lands and hereditaments comprised in the respective lots so sold as aforesaid are set forth in the second schedule hereto [*or are set forth in the exhibit marked A. to the affidavit of L. M. filed the , 18 , which exhibit is to be filed with this certificate*].

The evidence produced, &c.

Chief clerk's certificate of result of a sale in several lots.

The first schedule above referred to.

Name and address of the Purchaser.	No. of Lot.	Price.	Deposit.	Balance remaining unpaid.
Edward Thornton, of Epping, Essex, Farmer.....	1	£ 900	£ 90	£ 810
Thomas Edward Mason, of Ilford, Essex, Esquire	6	750	75	675
Totals.....		£1650	£165	£1485

The second schedule above referred to.

[Set out the particulars of each lot sold, as in the printed particulars of sale (f).]

X. DISTRESS FOR RENT.

1.

Warrant to I, J. N., of , in the county of , landlord of the premises hereinafter mentioned, hereby authorize and require you, A. B., of , in the county of , to distrain the goods, chattels and effects in and upon the house and premises, in the occupation of C. D., situate and being [No. , Street], in the parish of , in the county of , for £ , being the amount of quarters' rent due to me for the same [at Lady-day] last; and to proceed thereon as bailiff for the recovery of the said rent as the law allows. But I expressly prohibit you from taking any property not legally liable to a distress for rent.

Dated this day of , 18 .

(Signed)

J. N. (a).

2.

Warrant to I, J. N., of , in the county of , landlord of the premises hereinafter mentioned, hereby authorize and require you, a farm for rent.

(f) This schedule is, of course, omitted, where the printed particulars are filed with the certificate.

(a) No stamp is required.

A. B., of _____, in the county of _____, to distrain the goods, chattels and effects [and also the cattle and growing crops] in and upon the farm, lands and premises in the occupation of C. D., situate and being at _____, in the parish of _____, [continue as in the preceding form].

3.

An Inventory

Of the several goods, chattels and effects [cattle and growing crops] Inventory distrained for rent by A. B., of _____, as bailiff of and for of goods J. N., of _____, Esq., on the _____ day of _____, 18____, in and upon the [house, outhouses, or farm, lands] and premises in the occupation of C. D., situate and being [No. _____, Street], in the parish of _____, in the county of _____, for £ _____, being _____ quarters' rent due to the said J. N. [at _____ last, or on the _____ day of _____ last].

In the dwelling house.

Ground floor.

Front room.—One dining table, six chairs [all the other articles in this room intended to be distrained].

Back room.—[Enumerate the articles in this room intended to be distrained].

[And so on for all the floors in the house.]

In the yard.—[Enumerate the articles intended to be distrained; and continue with the stables, coach-house, out-houses, barns, garden, &c.].

In the fields.

1. In the field known as "Black Acre."—Seven cows, three calves, six oxen, one bull, &c.

2. In the field known as "Park Land."—One haystack, two stacks of wheat, one stack of straw, about _____ acres, more or less, of growing crops of [wheat or barley, &c., as the case may be].

Dated this _____ day of _____, 18____.

(Signed) _____ A. B., of _____,
Bailiff of the above-named J. N.

4.

To C. D., and all others whom it may concern.

Take notice that I, A. B., as bailiff of and for J. N., Esq., your Notice of landlord, and by his authority and on his behalf have this day distress for rent (b).

(b) To be written at the foot of a true copy of the inventory, or to have such true copy annexed.

distrained on the premises, in your occupation or possession, named in the inventory above-written [or hereunto annexed] the [cattle] goods, chattels and effects mentioned in the said inventory, for £
 being the amount of quarters' rent due to the said J. N., at
 last [or on the day of last] for the said
 premises; and unless you pay the said rent so due as aforesaid, with the charges of distraining for the same, within five days from the service upon you of this notice, the said [cattle] goods, chattels and effects will be appraised and sold according to law. [If cattle or goods are removed, mention to what place, e.g., thus: "And take notice further that the said cattle have been removed to, and are now in, the common pound in and for the parish of , in the county of ."]

Dated this day of , 18 .

(Signed) A. B., of ,
 Bailiff of the above-named J. N.

5.

Notice of
 distress of
 growing
 crops (c).

To Mr. C. D., and all others whom it may concern.
 Take notice that I, A. B., as bailiff of and for J. N., Esq., your landlord, have this day distrained on the [farm, lands and] premises, in your occupation or possession, named in the inventory [above-written or hereunto annexed] the [cattle, goods, chattels and effects, and also the] growing crops, specified in the said inventory, for the sum of £ , being the amount of quarters' rent due to the said J. N. [at last or on the day of last] for the said [farm, lands and] premises; and unless you pay the said rent so due as aforesaid, with the charges for distraining for the same, within five days from the service upon you of this notice, the [said cattle, goods, chattels and effects will be appraised and sold according to law, and if the same be insufficient for the payment thereof, the] said J. N. will proceed to cut, gather, make, cure, carry and lay up the said crops, when ripe, in the barn or other proper place upon the said premises, and in convenient time to sell and dispose of the same, or a sufficient part thereof, in or towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to law.

Dated this day of , 18 .

(Signed) A. B., of ,
 Bailiff of the above-named J. N.

6.

We, the above- [or within-] named D. E. and E. F., appraisers, The having inspected the [cattle] goods, chattels and effects [or growing appraise-crops] mentioned in the above- [or within-] written inventory, do ment (d). appraise and value the same at the sum of pounds, shillings and pence.

As witness our hands, the day of , 18 .
 (Signed) D. E. } Appraisers.
 E. F. }

7.

Memorandum that C. D., of , whose goods and chattels Tenant's have been distrained and impounded for rent by J. N., his landlord, consent to consents that the said J. N., or some person for him, shall continue landlord, or in possession of the said goods and chattels in and upon the dwelling- bailiff, con- house and premises of the said A. B. at aforesaid for the tinuing in space of days from the date hereof, the said J. N. having at possession the request of the said C. D. agreed not to remove or sell the said for more goods and chattels until the expiration of that time, and it being than five understood that the said goods and chattels shall not be replevied, days. nor the said J. N. prejudiced by the delay, and that the expenses of keeping the possession shall be paid by the said A. B. ; and the said A. B. further consents to allow days from the date hereof for the sale of the said goods and chattels, and that such sale shall and may take place on the premises of the said A. B.

Dated this day of , 18 .
 (Signed) C. D.

8.

To G. H., sheriff of the county of , his under-sheriff and Notice to bailiffs, and all others whom it may concern. sheriff,
 Take notice that the sum of £ , being the amount of [six under 8 months'] rent, due on the day of last, is now owing Ann. c. 14, to C. D., of , Esq., from L. M., of , for the premises s. 1, of rent situate at &c., in the occupation of the said L. M., upon which due from premises I am informed that you have taken certain goods and chat- execution tels in execution ; and you are hereby required not to remove any of debtor (e).

(d) This should be either annexed to or endorsed upon the inventory.

(e) Cf. Woodf. 883.

the said goods and chattels from the said premises, until the said arrears of rent are paid.

Dated this day of , 18 .

(Signed) R. S., of
Agent for L. M., of , Esq.

9.

Notice to
high bailiff
of County
Court, pur-
suant to 19
& 20 Vict.
c. 108, s.
75 (f).

To the high bailiff of the County Court of , holden at , his bailiffs and officers, and all others whom it may concern. Take notice that A. B., whose goods you have taken in execution under a warrant from the said County Court, holds the [house or apartments] in which the said goods were taken as tenant thereof to C. D., of , Esq., under a [tenancy from month to month from the first day of each month, at the monthly rent of £ , payable in advance on the day of each month]; and I now, as the agent of and for the said C. D., and on his behalf, claim the sum of £ for arrears of the said rent for two months ending on the day of last, which said rent or sum of £ now remains in arrear and unpaid.

Dated the day of , 18 .

(Signed) E. F., of
Agent for the above-named C. D.

XI. MISCELLANEOUS FORMS.

1.

Bond for
faithful
service of
clerk.

KNOW ALL MEN by these presents that We, A. B., of &c., and C. D., of &c. [sureties], are held and firmly bound unto E. F., of &c., and G. H., of &c. [partners], in the penal sum of £ [double the amount secured] of lawful money of Great Britain, to be paid to the said E. F. and G. H., or their certain attorney, executors, administrators or assigns. For which payment to be well and truly made we bind ourselves, and each of us jointly and severally our and each of our heirs, executors and administrators, and every of them, firmly by

these presents. Sealed with our seals. Dated this day of
 , in the year of the reign of our Sovereign Lady
Victoria, by the grace of God Queen of the United Kingdom of Great
Britain and Ireland, Defender of the Faith, and in the year of our
Lord. 18 .

Whereas the above-named [partners] have agreed to admit T. J. into their service as clerk, and to retain and to continue him in such service (subject to determination of the agreement on three months' notice by either party), on his obtaining two respectable persons to become sureties for his duly and faithfully accounting to them the said [partners] and the survivors and survivor of them, their and his executors and administrators, and other the person or persons who shall or may have become partner or partners with them, or any or either of them, and his and their executors and administrators, in manner hereinafter mentioned, and for his faithful and honest conduct during the time of his continuance in the service of the said [partners, &c.]; and the said [sureties] have, at the request of the said T. J., agreed to become such sureties, and have for that purpose executed the above-written bond or obligation.

Now the condition of the above-written obligation is such, that if the said T. J. shall and do and from time to time, and at all times, well and satisfactorily account for and pay over and deliver to the said [partners, &c.] all and every sum and sums of money and securities for money, goods and effects whatsoever, which he, the said T. J., shall receive for their, or any or either of their use, or which shall at any time or times be entrusted to his care by them, or any or either of them, or of their correspondents or customers, or others to whom they, or any or either of them, are, is or shall be liable or accountable; and do not at any time embezzle, make away with, obliterate, deface or in anywise injure any of the money, securities for money, books, papers, writings, goods or effects of them, or any or either of them, or their, or any or either of their correspondents or customers, or others [&c.]. Then and in such case the above-written obligation to be void and of no effect; otherwise to be and remain in full force and virtue. Provided always nevertheless, and it is hereby declared, that each of the said [sureties] is not to be, nor are his executors or administrators, to be, separately liable for more than [£1000] parcel of the said sum of [£2000] mentioned in the said above-written bond or obligation. Provided also, that each of the said [sureties] shall be at liberty to put an end to his liability on the above bond or obligation on giving to the said [partners], their executors or administrators, six months' notice in writing of the intention so to do.

Sealed and delivered by the above bounden } A. B. (L. s.)
A. B. and C. D. in the presence of } C. D. (L. s.)

until actual payment of the said debt; and I require you to pay such interest accordingly.

Dated, &c.

(Signed) A. B.

To Mr. .

7.

Notice to
pay rent to
mortgagee.

To Mr. C. D.

SIR,—Take notice, that, on the day of , &c., the premises situate &c., now in your occupation, and held by you as tenant under A. G., of &c., were duly conveyed and mortgaged to me, for securing the repayment of £ and interest after the rate of £ per cent. at a certain day now past, and that such principal sum, with an arrear of interest, is still due and unpaid from the said A. G. to me. I therefore give you notice not to pay any rent now due, or hereafter to become due from you, for the said premises, to the said A. G., or any other person than to me, or to whom I shall appoint, and to pay the same to me or such person accordingly. Dated &c.

8.

Notice of
an equit-
able mort-
gage by
deposit.

SIR,—Take notice that Messrs. A. & Co., of &c., have deposited in my possession, as a lien and equitable mortgage, certain deeds and documents constituting their title, and evidence of their right, to an estate situate &c., to secure the repayment of £ , and lawful interest [and also all further advances and interest thereupon]. You will, therefore, take notice of this my interest in and claim upon this estate, so that I may at all times retain, and have a preference against, all or any subsequently-created interest or charge; but, until notice to the contrary, you are at liberty to pay your rent to Messrs. A. & Co. Dated &c.

9.

Notice to
repair.

SIR,—Pursuant to a covenant contained in the indenture of lease, executed by me to you, bearing date on or about the day of , 18 , I hereby give you notice, and require you, to put the [messuage or dwelling-house] thereby demised in complete and substantial repair, and particularly that you [Enumerate particular repairs wanted]. As witness my hand, this day of , 18 .

To Mr. C. D.

A. B.

10.

SIR,—As agent for J. H., Esq., your landlord, and on his behalf, Notice to [hereby give you notice, and require you to quit and deliver up the quit by possession of the messuage or dwelling-house [or rooms and apartments, or farm, lands and premises], with the appurtenances, which to tenant. you now hold as tenant of the said J. H., in the parish of , in the county of , on the day of next, [or at the expiration of the current year of your tenancy, which will expire next after the end of one half-year from the date of this notice]. Dated this day of , 18 .

To Mr. C. D.

A. B., of
Agent for the above-named J. H., Esq.

11.

SIR,—I hereby give you notice of my intention to quit, and that I Notice to shall, on the day of next, quit and deliver up the quit by possession of the dwelling-house and premises, situate at , tenant to which I now occupy as tenant under you. Dated this day landlord. of , 18 .

To Mr. C. D.

A. B.

12.

To .—Whereas, by a certain indenture of lease, bearing Notice date &c., and made between &c., I, the said A. B., for the consideration therein mentioned, did demise and lease to you, C. D., your power to executors, administrators and assigns, a certain messuage &c., situate determine &c., to hold for the term of twenty-one years thence next ensuing, a lease for determinable nevertheless as therein and hereinafter mentioned; in twenty-one which said indenture is contained a proviso that &c. [State proviso]: years at Now I, the said A. B., in pursuance of the power given me by the the expira- said proviso, do hereby give you notice that it is my mind and inten- tion of the tion to avoid and determine, and that I do hereby avoid and deter- first seven mine, the said indenture of lease, and the demise therein contained, years. at the end of the first seven years of the said term of twenty-one years thereby granted. Dated this day of , 18 .

(Signed)

A. B.

13.

SIR,—In pursuance of the provisions of the statute 14 & 15 Vict. Notice of c. 25, s. 3, I, C. T., of &c., tenant of the farm [or lands] situate &c., tenant's

intention
to remove
building.

whereon is erected [a granary], which [granary] was erected by me at my own cost and expense, with the consent in writing required by the said statute, do hereby give you notice that, at the expiration of one month from the date hereof, unless you previously elect to purchase the same as empowered by the said statute, I shall remove the said [granary] in manner authorized by the said statute. Dated &c.

To A. B., Esq.

14.

Notice of
landlord's
election to
purchase
building.

SIR,—I, the undersigned E. F., as agent for, and by the authority of, A. B., Esq., your landlord, do hereby, on behalf of the said A. B., elect to purchase the building specified in your notice of &c. ; and I give you notice of the choice of Mr. G. H., of &c., to be referee of the said A. B., to ascertain and determine the value of the said building, pursuant to the statute in such case made and provided. Dated &c.

To Mr. C. T.

E. F.

15.

Notice of
appoint-
ment of
referee.

SIR,—I, C. T. [A. B.], of &c., do hereby give you notice that I have chosen Mr. I. K., of &c., to be my referee in the matters referred to in my [your] notice to you [me], dated &c., and given pursuant to the statute 14 & 15 Vict., c. 25, s. 3. And I require you to choose a referee on your part, agreeably with the provisions of the said statute. Dated &c.

To &c.

C. T.

APPENDIX.

APPENDIX A.—STATUTES.

LICENCES.

6. GEO. IV. c. 81.

An Act to repeal several duties payable on Excise licences in Great Britain and Ireland, and to impose other duties in lieu thereof; and to amend the laws for granting Excise licences. [27th June, 1825.]

7. That in every licence to be taken out under or by authority of this Act shall be contained and set forth the purpose, trade or business for which such licence is granted, and the true name and place of abode of the person or persons taking out the same, and the true date or time of granting such licence, and, except in the case of auctioneers, the place at which the trade or business for which such licence is granted shall be carried on. Provided always that persons in partnership, and carrying on their trade or business in one place and set of premises only, shall not be obliged to take out more than one licence in any one year for the purpose of carrying on such trade or business, save and except that each and every person whatsoever exercising or carrying on the trade or business of an auctioneer, or acting as such, shall take out a separate and distinct licence for that purpose, anything herein contained to the contrary thereof notwithstanding.

10. That no one licence taken out under or by authority of this Act by any person or persons, except auctioneers and maltsters, shall authorize or empower such person or persons to exercise or carry on the trade or business mentioned in such licence in more than one separate and distinct set of premises, such premises being all adjoining or contiguous to each other, and situate in one place, and held together for the same trade or business, and of which he, she or they shall have made lawful entry to exercise or carry on therein his, her or their trade or business as aforesaid at the time of granting such licence; but that a separate and distinct licence shall be taken out by all and every such person or persons as aforesaid, except as afore-

duty, to carry on his trade in more than one separate and distinct set of premises.

No licence necessary for sale whilst goods are in the import warehouse.

Licences taken out by brewers and distillers, and by publicans as retailers of beer, spirits or foreign wine, or sweets or made wines, or mead or metheglin, shall expire on the 10th of October in each year, and all other licences on the 5th day of July, to be

said, to exercise or carry on his, her or their trade or business as aforesaid at or in any other or different premises than as before mentioned: Provided always that, where the amount or rate of any such licence shall depend upon the quantity of goods made or manufactured by the person or persons to whom the same is granted, such quantity shall be computed from the respective goods only made or manufactured by such person or persons at the premises in respect of which such licence is granted, and shall not include goods made or manufactured by such person or persons at any other or different premises for which a separate and distinct licence is required as above mentioned.

12. That it shall not be necessary for any person or persons to take out an excise licence for the sale of any foreign goods or commodities for the sale of which in any manner an excise licence is required by this Act, whilst such goods or commodities shall be or remain in the warehouse or warehouses in which the same shall have been deposited, lodged or secured according to law before payment of duty upon the importation thereof, anything in this or any other Act to the contrary thereof in any wise notwithstanding. Provided always that every such sale shall be of not less than one entire cask or package of the liquors or goods so warehoused, and be made to one person or to persons carrying on trade or business in partnership.

16. That from and after the 5th day of June, 1825, all excise licences taken out in the United Kingdom by any brewer or brewers of beer, or by any distiller or maker, distillers or makers, of low wines or spirits, or by any person or persons who shall be duly authorized by justices of the peace to keep a common inn, alehouse or victualling house, and who shall take out a licence for selling beer, cyder or perry by retail, to be *drank* or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, under or by virtue of this Act or any other law or laws of excise (except any licence or licenses theretofore granted, and which shall be then in force and unexpired) shall continue and be in force from the day of the date of such licences respectively until the 10th day of October following, on which day in each year all such licences, except as aforesaid, shall expire; and that all other excise licences throughout the United Kingdom, except those above specified, and except as above excepted, shall continue and be in force from the day of the date of such licences respectively until the 5th day of July following, on which day in each year all such licences as last aforesaid, except as aforesaid, shall expire; and all and every person or persons who shall have taken out any such licence as aforesaid, and who shall wish or intend to continue the trade or business for which such licence was granted for any longer space of time, shall take out a fresh licence for the year following, to expire on one of such days as hereinbefore mentioned, according to the nature of the licence by him, her or them taken out, and shall so renew the same from year to year, so long as he, she or they shall continue such trade or business, and shall pay in each and every such case the duty thereupon imposed at

such time and place as hereinbefore mentioned ; and every such person or persons shall in every such case as aforesaid give notice in writing, at least twenty-one days before the expiration of the current licence to him, her or them before granted, of such his, her or their intention to continue the trade or business for which such licence was before granted, to the collector or supervisor or other person or persons authorized to grant licences for the district or place at which such trade or business shall be carried on ; and in cases where the excise licence is so renewed as aforesaid, and such notice as aforesaid shall have been given, the new licence shall bear date from the day or date of the expiration of the current licences before granted ; but in cases where such notice shall not have been given as aforesaid, and in all other cases than as aforesaid, the licence shall bear date from the day of the date of the application made for such licence, although and notwithstanding any such licence may be delivered at any day subsequent to the date of such application.

21. That upon the death of any person or persons licensed under or by virtue of this act or any law or laws of excise, or upon the removal of any such person or persons from the house or premises at which he, she or they were authorized by such licence to exercise or carry on the trade or business mentioned in such licence, it shall and may be lawful for the person and persons authorized to grant licences to authorize and empower, by indorsement on such licence, or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the wife or child, of such deceased person, or the assignee or assigns of such person or persons so removing as aforesaid, who shall be possessed of and occupy the house or premises before used for such purpose as aforesaid, in like manner to exercise or carry on the same trade or business mentioned in such licence, in or upon the same house or premises at which such person or persons as aforesaid deceased or removing as before mentioned, by virtue of such licence to him, her or them in that behalf granted, exercised or carried on such trade or business, for and during the residue of the term for which such licence was originally granted, without taking out any fresh licence or payment of any additional duty or any fee thereupon, for the residue of such term and until expiration thereof. Provided always that a fresh entry of the premises at which such trade or business shall continue to be so exercised or carried on as aforesaid shall thereupon be made by and in the name or names of the person or persons to whom such authority as aforesaid shall be granted ; and provided also that no such authority as aforesaid shall be granted for the sale of beer, cyder or perry, or sweets, or made wines or sweets, mead or metheglin, by retail, to be drunk or consumed in or upon the house or premises for which the original licence was granted, except and in such cases where a proper certificate, granted and given by a justice of the peace or magistrate, or other competent person according to the law, made after the death or removal of the former occupier or occupiers of the premises shall have taken place, shall be produced, approving of the person or persons to whom such certificate shall be granted or given as aforesaid.

not without
certificate
of a magis-
trate.

Parties
licensed to
put up
over their
premises
their
names and
trades ;
penalty
for not
doing, or
unlicensed
persons
doing, the
same, £20.

25. That all and every person or persons in the United Kingdom required by any law or laws of excise to make entry of his, her or their premises in order to carry on therein any trade or business for which an excise licence is required, and who shall have taken out such licence, shall paint or cause to be painted, or shall place and fix, in letters publicly visible and legible and at least one inch long, in and upon his, her or their entered premises his, her or their names respectively at full length, or, where there are partners or more than one person engaged in carrying on jointly the same trade or business, the name or style of the firm or partnership, and after such name or names the word "licensed," adding thereto the words necessary to express the purpose, or trade, or business, for which such licence has been granted ; and such person or persons shall cause such letters to be painted, or placed and fixed, in some conspicuous place on the outside of the front of his, her or their said premises, over the principal outward door or gate, or entrance door, thereto, and not more than three feet from the top of such outward door or gate, or entrance door ; and if any such person or persons as aforesaid shall not paint, or place and fix, such letters as aforesaid, or shall not preserve and keep the same so painted, placed and fixed, or shall not repaint or renew the same as often as necessity shall require for the purpose of keeping the same in good order and condition, during the continuance of his, her or their licence, he, she or they shall forfeit for every such offence the sum of twenty pounds ; and if any person or persons not being licensed to exercise or carry on any trade or business for which a licence is required by this act, shall put or have any such letters as aforesaid upon his, her or their premises, or any letters importing that he, she or they does or do exercise or carry on any such trade or business, or is or are licensed so to do, all and every such person or persons shall for every such offence forfeit the sum of twenty pounds.

Penalty on
licensed
persons not
producing
their
licence on
demand of
officer,
£20.

28. That if any person or persons licensed to exercise or carry on any trade or business, or make or sell any goods, for which an excise licence is required, shall not produce and deliver such licence to be read and examined by any officer or officers of excise within a reasonable time after such officer or officers shall demand the production thereof, such person or persons shall for each and every such offence forfeit the sum of twenty pounds.

8 & 9 VICT. c. 15.

An Act to repeal the Duties of Excise on Sales by Auction, and to impose a new Duty on the Licence to be taken out by all Auctioneers in the United Kingdom. [8th May, 1845.]

By this act,
After reciting that by 6 Geo. IV. c. 81, a certain duty of excise is imposed for and upon every licence to be taken out by every person

exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements or hereditaments by auction; and by a regulation in the said last-recited act, and by certain other acts relating to the duties of stamps, auctioneers are required in certain cases to take out separate and distinct licences for selling particular goods and chattels by auction, in addition to their auctioneer's licence; and that certain duties of excise upon the purchase-money arising or payable by virtue of any sale at auction in Great Britain and Ireland are imposed and regulated by several acts, that is to say, by 43 Geo. III. c. 69, 45 Geo. III. c. 30, 54 Geo. III. c. 82, 55 Geo. III. c. 142, and by several other acts for altering or amending the said recited acts or some of them; and that it is expedient that the said last-mentioned duties and all duties now imposed upon or for or in respect of auctioneers or auctions, and all acts, clauses, provisions and regulations now in force relating thereto, should cease, save and except as after mentioned:

It is enacted:—

1. That from and after the passing of this act the said last mentioned duties and all duties of excise now payable in Great Britain or Ireland upon or for or in respect of auctioneers and auctions or sales by auction, and all and every act or acts of excise, and all clauses, repealed provisions, exemptions, penalties and things in any act of excise in force in Great Britain and Ireland respectively at or immediately before the passing of this act, relating to auctions or to duties on sales by auction, or to any auctioneers, save only such clauses, provisions, penalties, matters and things as are contained in the said recited act 6 Geo. IV. c. 81, and are not repealed or altered by this act, are hereby repealed [except for the purpose of recovering duties, fines, &c., or allowing exemptions which have been incurred or become due or allowable before the passing of the act].

2. That from and after the passing of this act there shall be raised, levied, collected and paid to Her Majesty, her heirs and successors, in lieu of all duties now imposed on licences to be taken out by auctioneers throughout the United Kingdom, the following annual sum or duty of excise, that is to say: for and upon every licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom, the sum of ten pounds.

3. That the said duty hereby imposed shall be under the management of the commissioners of excise (a) and shall be collected, paid and accounted for in the same manner as other the duties of excise and shall be charged, raised, levied, sued for and paid under the provisions of this act, and the general or special provisions, clauses, enactments, regulations, pains, penalties and forfeitures contained in any act or acts relating to the collection and management of the revenue of excise; and all penalties by this act imposed shall be

New duty on auctioneers' licences throughout the United Kingdom

New duty to be under the management of the commissioners of excise.

(a) Now of the Commissioners of Inland Revenue; 12 & 13 Vict. c. 1.

prosecuted, recovered and applied as any other penalties under the laws of excise.

Licences to be taken out, and to be renewed annually.

4. That every person who exercises or carries on the trade or business of an auctioneer or who acts in such capacity at any sale or roup, and every person who sells or offers for sale any goods or chattels, lands, tenements or hereditaments, or any interest therein, at any sale or roup where any person or persons become the purchaser of the same by competition and being the highest bidder, either by being the single bidder, or increasing upon the biddings made by others, or decreasing on sums named by the auctioneer or person acting as auctioneer, or other person at such sale, or by any other mode of sale by competition, shall (except as hereinafter in this act mentioned) be deemed to carry on the trade or business of an auctioneer and shall be required to take out such licence as by this act directed; and every such licence shall be renewed annually ten days at least before the expiration thereof, on the fifth day of July in each and every year; and every auctioneer having had such a licence who continues to carry on the trade or business of an auctioneer in the year next ensuing the expiration thereof, and omits to renew the same as aforesaid, and every person who carries on the trade or business of an auctioneer as aforesaid, without taking out such licence as by this act directed, shall (except as hereinafter in this act mentioned) forfeit one hundred pounds: Provided always [that auctioneers who have licences in force at the passing of this act, and which licences do not expire until the fifth day of July now next ensuing, shall not be required to take out the licence by this act directed for the purpose of carrying on the business of an auctioneer, until ten days before the expiration of their current licences, but that every such auctioneer may, at any time within the last quarter of the current year, to expire on the said fifth day of July, take out the licence by this act directed, on payment of a fourth part of the duty imposed on such last-mentioned licence; but (b)] that on every such licence taken out after the said fifth day of July, at whatever period of the year, the full duty of excise by this act imposed shall be paid, any other act or acts to the contrary thereof notwithstanding.

Auction licence not necessary in certain cases.

5. That it shall not be necessary for any person selling any goods or chattels by auction in any of the cases hereinafter mentioned to take out the licence by this act required: Any person selling any goods or chattels by auction under a distress for non-payment of rent or tithes to less amount than twenty pounds; or under authority of 6 Geo. IV. c. 48; 6 & 7 Will. IV. c. 75 (c); 7 Will. IV. & 1 Vict. c. 43 (c); 7 Will. IV. & 1 Vict. c. 41, or under authority of any other act or acts of Parliament now in force in which the like exemption as by the act specified is given to the proper officer of court executing the process of such court to sell the effects seized by him by auction, without taking out or having any licence as an auctioneer, provided the sum for which such process is enforced is under twenty pounds (c).

(b) The words in brackets are repealed: Statute Law Revision Act, 1875.

(c) See note (g), p. 11, ante.

6 (d). That so much of the said recited act of 6 Geo. IV. c. 81, 6 Geo. 4, as enacts "that every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements or hereditaments by auction shall, over and above any licence to him or her granted as an auctioneer, take out such licence as is required by law to deal in or retail, or to vend, trade in or sell any goods or commodities for the dealing in or retailing or vending, trading in or selling of which an excise licence is specially required, before he or she shall be permitted or authorized to sell such goods or commodities by auction; and if any such person shall sell any such goods or commodities as aforesaid by auction without having taken out such licence as aforesaid for that purpose, he or she shall be subject and liable to the penalty in that behalf imposed upon persons dealing in or retailing, vending, trading, or selling any such goods or commodities without licence, notwithstanding any licence to him or her before granted as aforesaid for the purpose of exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements or hereditaments by auction, anything herein contained to the contrary notwithstanding," together with the proviso thereto attached, and so much of any other act or acts of parliament by which it is required that a separate and distinct licence shall be taken out by any auctioneer selling by auction gold or silver plate or patent medicines, or any other articles, are hereby repealed; and any auctioneer having at the time in force a licence on which the duty under the provisions of this act has been paid may sell by auction any such property, goods or commodities, without taking out any other licence in such respect, any other act or acts to the contrary thereof notwithstanding.

7. That every auctioneer, before beginning any auction, shall affix or suspend, or cause to be affixed or suspended, a ticket or board containing his true and full christian and surname and residence, painted, printed or written in large letters, publicly visible and legible, in some conspicuous part of the room or place where the auction is held, so that all persons may easily read the same, and shall also keep such ticket or board so affixed or suspended during the whole time of such auction being held; and if any auctioneer begins any auction, or acts as auctioneer at any auction, in any room or place where his name and residence is not so painted or written on a ticket or board so affixed or suspended, and kept affixed or suspended as aforesaid, he shall forfeit for every such offence the sum of twenty pounds.

8. That, if any person acting as an auctioneer, and by this act required to take out a licence as a person exercising or carrying on the trade or business of an auctioneer, does not at the time of any sale by auction, on demand of any officer of excise or customs, or any officer of stamps and taxes, produce and show to such officer a proper licence to him granted under this act, and then in force, or

Auctioneer, before he shall commence any sale, shall suspend or affix a ticket or board containing his full Christian name and surname and place of residence. Licence to be produced on

(d) This section is repealed, so far as it relates to the repeal of part of 6 Geo. IV. c. 81: Stat. Law Rev. Act, 1875.

demand, or does not immediately deposit with such officer the sum of ten pounds, every such person may be arrested and detained by any officer of the peace, as hereinafter mentioned; and every officer of the peace shall, at the request of any such officer as first aforesaid, at the termination of such sale, or sooner, if convenient, arrest and convey such person before some one of Her Majesty's justices of the peace of the county or place where such sale has been held, and such justice shall examine into the fact or facts charged, and, upon proof, either by confession of the party offending, or by the oath of one or more credible witness or witnesses (which oath the said justice is hereby empowered to administer), that the person so brought before him did act as an auctioneer as aforesaid, and did not produce such licence, or deposit such sum of money as aforesaid, shall, by warrant under his hand, commit such offender to the common gaol or house of correction for the county or place where the said sale has been held, for any time not exceeding one calendar month from the day of such commitment; and no such imprisonment, nor the deposit of such sum of money as aforesaid, shall in any manner prejudice or affect any proceedings afterwards instituted for recovery of the penalty incurred by such person for acting as an auctioneer at such sale as aforesaid without the licence by this act directed; but if any person having so deposited such sum of money as aforesaid, at any time before the expiration of one week from the date of such sale as aforesaid, produces to the officer with whom he deposited the same a proper licence to him granted and in force as an auctioneer before and at such sale, every such officer shall immediately thereupon repay to such person the full sum so deposited with him; if otherwise, every such officer shall, at the expiration of the said week, account for all such money to the commissioners of excise, or such person as they may appoint to receive the same.

46 GEO. III. c. 43.

An act for granting to His Majesty certain stamp duties on appraisements (e) and on licences to appraisers (f) in Great Britain.

[5 May, 1806.]

Persons appraising property for hire to be deemed appraisers. 4. That every person who shall value or appraise any estate or property, real or personal, or any interest, in possession or reversion, remainder or contingency, in any estate or property, real or personal, or any goods, merchandise or effects, of whatsoever kind or description the same may be, for or in expectation of any hire, gain, fee or reward or valuable consideration to be therefor paid him shall be deemed and taken to be an appraiser within the provisions of this act to all intents and purposes.

(e) See now, *post*, pp. 406, 423.

(f) The duty on the licence is now an excise duty: 27 & 28 Vict. c. 56, s. 6.

[5. Appraisers shall take out annual licences from 5th July, to be granted by commissioners of stamps &c.]

6. That from and after the 5th day of July, 1806, no person shall appraise or value any estate, or property or effects, real or personal, or any interest, in possession or reversion, remainder or expectancy, persons in any estate or property, real or personal, for or in expectation of appraising, hire or reward, without being so licensed as aforesaid, on pain of £50. forfeiting for every such offence the sum of fifty pounds.

7. Provided always that all persons who shall be duly licensed according to law to act as auctioneers shall and may act as appraisers, without taking out any other licence in pursuance of this act, anything in this act contained to the contrary notwithstanding.

Auctioneers duly licensed may act as appraisers, without licence.

8 & 9 VICT. c. 76.

An act to increase the stamp (g) duty payable on licences to appraisers, &c. [4th August, 1845.]

1. That from and after the passing of this act the said duty now payable in Great Britain and Ireland respectively under or by virtue of the said several recited acts, or any of them, for or in respect of a licence to use and exercise the calling or occupation of an appraiser shall cease and determine, and the same is hereby repealed; and that in lieu thereof there be granted, raised, levied, collected and paid in Great Britain and Ireland respectively unto and for the use of Her Majesty, her heirs and successors, the duty of £2 for and in respect of a licence to use and exercise the calling or occupation of an appraiser, to be taken out yearly by every person (except a licensed auctioneer (h)), who shall exercise the said calling or occupation of an appraiser, or who, for or in expectation of any gain, fee or reward, shall make any appraisal or valuation chargeable by law with any stamp duty.

Stamp duty on appraisers' licences repealed and an increased duty thereon granted in lieu

24 & 25 VICT. c. 21.

An act for granting to Her Majesty certain duties of excise and stamps. [28th June, 1861.]

9. Persons going from town to town, or to other men's houses, carrying to sell, or exposing to sale, any goods, wares or merchandise, or carrying and exposing samples or patterns of any goods, wares or merchandise to be afterwards delivered, shall be deemed to be and shall be trading persons within the meaning of this act and of the acts now in force relating to hawkers, pedlars and petty chapmen, and shall be subject and liable to all the duties, provisions, regulations, pains and penalties in and by the said acts imposed or

Persons seeking orders for goods at other men's houses shall be deemed hawkers.

(g) See preceding note.

(h) Add, "or house agent": 24 & 25 Vict. c. 21, s. 11.

contained, as if the same were herein repeated and re-enacted with reference to the persons and matters and things aforesaid.—Provided that nothing herein contained shall extend to subject commercial travellers or other persons to the duties and provisions of the said acts by reason merely of their selling or seeking orders for goods, wares or merchandise to or from persons who are dealers therein, and who buy to sell again, nor to persons licensed by the excise to deal in spirits, wine or beer, or to the agents of such last-mentioned persons, nor to persons who are the real workers or makers of any goods or wares, or the servants of such persons, seeking orders for any of such goods or wares.

Who shall
be deemed
house
agents and
required to
be licensed
as such.

10. Every person who, as an agent for any other person, shall, for or in expectation of fee, gain or reward of any kind, advertise for sale or for letting any furnished house, or part of any furnished house, or who shall by any public notice or advertisement, or by any inscription in or upon any house, shop or place used or occupied by him, or by any other ways or means, hold himself out to the public as an agent for selling or letting furnished houses, and who shall let or sell, or agree to let or sell, or make or offer, or receive any proposal or in any way negotiate for, the selling or letting of, any furnished house, or part of any furnished house, shall be deemed to be a person using and exercising the business, occupation and calling of a house agent within the meaning of this act and the schedule (B) hereto, and shall be licensed accordingly. Provided that no person shall be deemed to be such house agent by reason of his letting, or agreeing or offering, to let, or in any way negotiating for the letting of, any house not exceeding the annual rent or value of £25. Provided also that any story or flat rated and let as a separate tenement shall be considered to be a house for the purpose of this enactment.

Excep-
tions.

13. Provided always that this act shall not extend to require any agent employed in the management of landed estates, or any attorney, solicitor, proctor, writer to the signet, agent or procurator admitted in any court of law, or any conveyancer who shall as such have taken out his annual certificate, or any auctioneer or appraiser having in force a licence as such, to take out a licence under this act as a house agent.

23 & 24 VICT. c. 113.

An act (among other things) to repeal the exemption from licence duty of persons dealing in foreign wine and spirits in bond, &c.

[28th August, 1860.]

Exemption
from
licence
duty of
persons
dealing in
wine and

5. The 12th section of the act 6 Geo. IV. c. 81, which enacts that it shall not be necessary for any person or persons to take out an excise licence for the sale of any foreign goods or commodities for the sale of which in any manner an excise licence is required, whilst such goods or commodities shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged or secured

according to law before payment of duty upon the importation thereof, spirits shall not extend to exempt from liability to take out an excise licence in bond for the sale of foreign wine or spirits any person who shall sell at one repealed time any quantity less than 100 gallons thereof respectively.

WEIGHTS AND MEASURES.

41 & 42 VICT. c. 49.

An act to consolidate the law relating to weights and measures (a).
[8th August, 1878.]

Preliminary.

1. This act may be cited as the **Weights and Measures Act**, Short title. 1878.

2. This act shall not come into operation until the first day of Commence-January one thousand eight hundred and seventy-nine, which day is ment. hereinafter referred to as the commencement of this act.

Metric Equivalents of Imperial Weights and Measures.

18. The table in the third schedule to this act shall be deemed Equiva-to set forth the equivalents of imperial weights and measures, and lents of the weights and measures therein expressed, in terms of the metric metric system; and such table may be lawfully used for computing and weightsand expressing, in weights and measures, weights and measures of the measures in terms of metric system. imperial weightsand measures.

Use of Imperial Weights and Measures.

19. Every contract, bargain, sale or dealing made or had in the United Kingdom for any work, goods, wares or merchandise, or other Trade thing which has been or is to be done, sold, delivered, carried or contracts, agreed for by weight or measure, shall be deemed to be made and had sales, deal- according to one of the imperial weights or measures ascertained by ings, &c., this act, or to some multiple or part thereof, and if not so made or to be in had shall be void; and all tolls and duties charged or collected ac- terms of cording to weight or measure shall be charged and collected according imperial weights or to one of the imperial weights or measures ascertained by this act, measures or to some multiple or part thereof.

Such contract, bargain, sale, dealing and collection of tolls and duties as is in this section mentioned is in this act referred to under the term "trade."

(a) Sales of bread, coal and gas are left untouched by this act; Chit. Stat. 4th ed. by Lely, Vol. VI. p. 881.

No local or customary measures, nor the use of the heaped measure, shall be lawful.

Any person who sells by any denomination of weight or measure other than one of the imperial weights or measures, or some multiple or part thereof, shall be liable to a fine not exceeding forty shillings for every such sale.

Sale by avoirdupois weight, with exceptions. 20. All articles sold by weight shall be sold by avoirdupois weight ; except that—

(1.) Gold and silver, and articles made thereof, including gold and silver thread, lace or fringe, also platinum, diamonds and other precious metals or stones, may be sold by the ounce troy or by any decimal parts of such ounce ; and all contracts, bargains, sales and dealings in relation thereto shall be deemed to be made and had by such weight, and when so made or had shall be valid ; and

(2.) Drugs, when sold by retail, may be sold by apothecaries weight.

Every person who acts in contravention of this section shall be liable to a fine not exceeding five pounds.

Exception for contract, &c., in metric weights and measures. 21. A contract or dealing shall not be invalid or open to objection on the ground that the weights or measures expressed or referred to therein are weights or measures of the metric system, or on the ground that decimal subdivisions of imperial weights and measures, whether metric or otherwise, are used in such contract or dealing.

Exception for sale of article in vessel not represented as being of imperial or local measure. 22. Nothing in this act shall prevent the sale, or subject a person to a fine under this act for the sale, of an article in any vessel, where such vessel is not represented as containing any amount of imperial measure, nor subject a person to a fine under this act for the possession of a vessel where it is shown that such vessel is not used nor intended for use as a measure.

Penalty on price lists, &c., denoting greater or less weight or measure than the same denomination of imperial weight or measure. 23. Any person who prints, and any clerk of a market, or other person, who makes, any return, price list, price current, or any journal or other paper containing price list or price current, in which the denomination of weights and measures quoted or referred to denotes or implies a greater or less weight or measure than is denoted or implied by the same denomination of the imperial weights and measures under this act, shall be liable to a fine not exceeding ten shillings for every copy of every such return, price list, price current, journal or other paper which he publishes (b).

(b.) This section is identical in terms with the repealed 5 & 6 Will. IV. c. 63, s. 31. The use of the expression "denotes or implies" seems to show that what is prohibited is the printing, &c., of the weights, &c., in a manner tending to mislead a reader into thinking that an imperial weight, &c., is meant, when a local weight, &c., is meant ; and not the printing, &c., of local weights, &c., altogether. *E.g.* to print "stone" when stone of 8 lbs. is meant is clearly illegal under the section, whereas to print "stone of 8 lbs." would seem to be legal. *Ib.* 884.

24. Every person who uses or has in his possession for use for Penalty on trade a weight or measure which is not of the denomination of some use or pos- Board of Trade standard shall be liable to a fine not exceeding five session of pounds, or in the case of a second offence ten pounds, and the weight unauthor- ized or measure shall be liable to be forfeited.

64. The schedules to this act, with the notes thereto, shall be con- weight or strued and have effect as part of this act. measure.

Effect of
schedules.

THIRD SCHEDULE.

PART I.

METRIC EQUIVALENTS.

Table of the Values of the Principal Denominations of Measures and Weights on the Metric System expressed by means of Denominations of Imperial Measures and Weights, and of the Values of the Principal Denominations of Measures and Weights of the Imperial system expressed by means of Metric Weights and Measures.

MEASURES OF LENGTH.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN IMPERIAL DENOMINATIONS.				
—	Metres.	Miles.	Yards.	Feet.	Ins.	Decimals.
Myriametre	10,000	{	6	376	0	11·9
Kilometre	1,000		or	10,936	0	11·9
Hectometre	100			1,093	1	10·79
Dekametre	10			109	1	1·079
Metre	1			10	2	9·7079
Decimetre	$\frac{1}{10}$			1	0	3·3708
Centimetre	$\frac{1}{100}$					3·9371
Millimetre	$\frac{1}{1000}$					0·3937
						0·0394

MEASURE OF SURFACE.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN IMPERIAL DENOMINATIONS.		
—	Square Metres.	Acres.	Square Yards.	Decimals.
Hectare, i.e. 100 ares . .	10,000	{	2	2280·3326
Dekare, i.e. 10 ares . . .	1,000		or	11,960·3326
Are	100			1196·0333
Centiare, i.e. $\frac{1}{100}$ are . .	1			119·6033
				1·1960

MEASURES OF CAPACITY.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN IMPERIAL DENOMINATIONS.					
	Cubic Metres.	Quartars.	Bushels.	Pecks.	Gallons.	Quarts.	Pints. Decimals.
Kilolitre, <i>i.e.</i> , 1,000 litres.	1	3	3	2	0	0	0·77
Hectolitre, <i>i.e.</i> , 100 litres.	$\frac{1}{10}$		2	3	0	0	0·077
Dekalitre, <i>i.e.</i> , 10 litres.	$\frac{1}{100}$			1	0	0	1·6077
Litre	$\frac{1}{1000}$						1·76077
Decilitre, <i>i.e.</i> $\frac{1}{10}$ litre.	$\frac{1}{10000}$						0·176077
Centilitre, <i>i.e.</i> $\frac{1}{100}$ litre.	$\frac{1}{100000}$						0·0176077

WEIGHTS.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN IMPERIAL DENOMINATIONS.					
	Grams.	Cwts.	Stones.	Pounds.	Ounces.	Drams.	Decimals.
Millier	1,000,000	19	5	6	9	15	04
Quintal	100,000	1	7	10	7	6	304
Myriagram	10,000		1	8	0	11	8304
Kilogram	1,000	{ (or 15432·3487 grains)					
Hectogram	100			2	3	4	3830
Dekagram	10				3	8	4383
Gram	1					5	6438
Decigram	$\frac{1}{10}$					0	56438
Centigram	$\frac{1}{100}$					0	056438
Milligram	$\frac{1}{1000}$					0	00056438

MEASURES OF LENGTH.

Imperial Measures.	EQUIVALENTS IN METRIC MEASURES.			
	Millimetre.	Decimetre.	Metre.	Kilometre.
Inch	= 25·39954			
Foot, or 12 inches	= 3·04794	= 0·30479	
YARD, or 3 feet, or 36 inches	= 0·91438	
Fathom, or 2 yards, or 6 feet	= 1·82877	
Pole, or 5½ yards	= 5·02911	
Chain, or 4 poles, or 22 yards	= 20·11644	
Furlong, 40 poles, or 220 yards	= 201·16437	= 0·20116
Mile, 8 furlongs, or 1,760 yards	= 1,609·31493	= 1·60931

MEASURES OF SURFACE.

Imperial Measures.	EQUIVALENTS IN METRIC MEASURES.			
	Square Decimetres.	Square Metres.	Ares.	Hectares.
Square inch	= 0·06451			
Square foot, or 144 square inches	= 9·28997	= 0·092900		
Square yard, or 9 square feet, or 1,296 square inches	= 83·60971	= 0·836097		
Pole or perch, or 30½ square yards . . . . .	...	= 25·291989		
Rood, or 40 perches, or 1,210 square yards . . . . .	...	...	= 10·116776	
Acres, or 4 roods, or 4,840 square yards . . . . .	...	...	...	= 0·40467
Square mile, or 640 acres . . . . .	...	...	...	= 258·98945

MEASURES OF CAPACITY.

Imperial Measures.	EQUIVALENTS IN METRIC MEASURES.			
	Decilitres.	Litres.	Dekalitres.	Hectolitres.
Gill	= 1·41983	= 0·14198		
Pint, or 4 gills	= 5·67932	= 0·56793		
Quart, or 2 pints . . . . .	...	= 1·13587		
GALLON, or 4 quarts . . . . .	...	= 4·54346		
Peck, or 2 gallons . . . . .	...	= 9·08692	= 0·90869	
Bushel, or 8 gallons, or 4 pecks . . . . .	...	...	= 3·63477	
Quarter, or 8 bushels . . . . .	...	...	...	= 2·90781

CUBIC MEASURE.

Imperial Measures.	EQUIVALENTS IN METRIC MEASURES.		
	Cubic Centimetres.	Cubic Decimetres.	Cubic Metres.
Cubic inch	16·38618		
Cubic foot, or 1,728 cubic inches . . . . .	...	28·31531	
Cubic yard, or 27 cubic feet . . . . .	...	...	0·76451

WEIGHTS.

Imperial Weights.	EQUIVALENTS IN METRIC WEIGHTS.			
	Grams.	Dekagrams.	Kilograms.	Millier or Metric Ton.
Grain	= 0·06479895			
Dram	= 1·77185			
Ounce, avoirdupois, or 16 drams, or 437·5 grains	= 28·34954	= 2·83495		
POUND, or 16 ounces, or 256 drams, or 7,000 grains	= 453·59265	= 45·35927	= 0·45359	
Hundredweight, or 112 lbs. . . .	...	...	= 50·80238	
Ton, or 20 cwt. . . . .	...	...	= 1016·04754	
Ounce, troy, or 480 grains . . .	= 31·103496	= 3·11035		= 1·01605

BANKRUPTCY.

32 & 33 VICT. c. 71.

An Act to consolidate and amend the Law of Bankruptcy.
[9th August, 1869.]

PART I.

ADJUDICATION AND VESTING OF PROPERTY.

Adjudication.

Petition for adjudication in bankruptcy. 6. A single creditor, or two or more creditors, if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than fifty pounds, may present a petition to the court praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults, hereinafter deemed to be and included under the expression "acts of bankruptcy : "

(1) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ;

(2) That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof ;

(3) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of England ; or, being out of England, remained out of England ; or,

being a trader, departed from his dwelling-house or otherwise absented himself; or begun to keep house; or suffered himself to be outlawed;

(4) That the debtor has filed in the prescribed manner in the court a declaration admitting his inability to pay his debts;

(5) That execution issued against the debtor, on any legal process for the purpose of obtaining payment of not less than fifty pounds, has, in the case of a trader, been levied by seizure and sale of his goods;

(6) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than fifty pounds, and the debtor, being a trader, has for the space of seven days, or, not being a trader, has, for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same.

But no person shall be adjudged a bankrupt on any of the above grounds, unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication; moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee, for the benefit of the creditors, upon payment of such estimated value.

11. [Definition of commencement of bankruptcy.]

15. [Descriptions of bankrupt's property divisible amongst creditors.]

17. [Devolution of property on trustee.]

22. [Possession of property by trustee.]

23. [Disclaimer as to onerous property (a).]

24. [Limitation of time for disclaimer.]

25. Subject to the provisions of this act, the trustee shall have power to do the following things:

(6). To sell all the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power,

(a) After disclaiming a lease, the trustee is not entitled, even though in possession, to remove the tenant's fixtures; the effect of the disclaimer is to give the landlord an absolute title to the fixtures as from the date of the order of adjudication; *Ex parte Stephens*, 7 Ch. D. 127; or, in the case of a trustee in liquidation, from the date of the appointment of the trustee; *Ex parte Glegg*, 19 Ch. D. 7.

if he thinks fit, to transfer the whole thereof to any person (b) or company, or to sell the same in parcels.

27. [Power of trustee (with the sanction of the committee of inspection) to compromise, &c.]

Trustee, if
a solicitor,
may be
paid for
his ser-
vices.

29. A trustee shall not, without the consent of the committee of inspection, employ a solicitor or other agent; but where the trustee is himself a solicitor, &c.

31. [Description of debts provable in bankruptcy.]

32. [Preferential debts.]

34. [Power of landlord to distrain for rent.]

94. [Protection of certain transactions with bankrupt.]

95. [Protection of certain transactions entered into by or in relation to the property of the bankrupt.]

30 & 31 VICT. c. 48.

An Act for Amending the Law of Auctions of Estates.

[15th July, 1867.]

Short title. 1. This act may be cited for all purposes as the "Sale of Land by Auction Act, 1867."

Commence- 2. This act shall commence and take effect on the first day of
ment of act. August, 1867.

Interpre-
tation of
terms.

3. "Auctioneer" shall mean any person selling by public auction any land, whether in lots or otherwise:

"Land" shall mean any interest in any messuages, lands, tenements or hereditaments, of whatever tenure:

"Agent" shall mean the solicitor steward or land agent of the seller:

"Puffer" shall mean a person appointed to bid on the part of the owner.

Where
sales are
invalid in
law, to be
also invalid
in equity.

4. And whereas there is at present a conflict between Her Majesty's courts of law and equity in respect of the validity of sales by auction of land where a puffer has bid, although no right of bidding on behalf of the owner was reserved, the courts of law holding that all such sales are absolutely illegal, and the courts of equity under some circumstances giving effect to them, but even in courts of equity the rule is unsettled; and whereas it is expedient that an end should be put to such conflicting and unsettled opinions: be it therefore enacted that, from and after the passing of this act, whenever a sale by auction of land would be invalid at law by reason of the employment of a puffer, the same shall be deemed invalid in equity as well as at law.

Rule re-
specting
sale
without
reserve, &c.

5. And whereas, as sales of land by auction are conducted, many of such sales are illegal, and could not be enforced against an unwilling purchaser, and it is expedient for the safety of both seller and pur-

(b) Including the bankrupt himself; *Kitson v. Hardwick*, 7 C. P. 473.

chaser that such sales should be so conducted as to be binding on both parties : be it therefore enacted by the authority aforesaid as follows : that the particulars or conditions of sale by auction of any land shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved ; if it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

6. And where any sale by auction of land is declared either in the Rule respecting particulars or conditions of such sale to be subject to a right for the seller to bid, it shall be lawful for the seller or any one person on his behalf to bid at such auction in such manner as he may think proper.

7. And whereas it is the long-settled practice of courts of equity in sales by auction of land under their authority to open biddings even more than once, and much inconvenience has arisen from such practice, and it is expedient that the courts of equity should no longer have the power to open biddings after sales by auction of land under their authority : be it further enacted by the authority aforesaid that the practice of opening the biddings on any sale by auction of land under or by virtue of any order of the High Court of Chancery shall, from and after the time appointed for the commencement of this Act, be discontinued, and the highest *bond fide* bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price (if any), shall be declared and allowed the purchaser, unless the court or judge shall, on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in the land (such application to be made to the court or judge before the chief clerk's certificate of the result of the sale shall have become binding), either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold upon such terms as to costs or otherwise as the court or judge shall think fit.

8. Except as aforesaid, nothing in this Act contained shall affect any sale of land made under or by virtue of any order of the High Court of Chancery in England, of the High Court of Chancery in &c., in Ireland, or of the Landed Estates Court there, or of the Court of Chancery in the County Palatine of Lancaster, or of any county or other court having jurisdiction in equity.

9. This Act shall not extend to Scotland.

Rule respecting opening biddings, by order of Chancery, except on ground of fraud, to be discontinued.

Court of Chancery, &c., in Ireland, or of the Court of Chancery in the County Palatine of Lancaster, or of any county or other respects excepted from operation of Act.

Not to extend to Scotland.

STAMPS.

33 & 34 VICT. c. 97.

An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending provisions relating thereto. [10 August, 1870].

Interpre-
tation of
terms.

2. In the construction and for the purposes of this Act the following words have the meanings by this section assigned to them, unless it is otherwise provided, or there be something in the context repugnant thereto :

- (1.) "The Commissioners" means the Commissioners of Inland Revenue :
- (2.) "Material" means and includes every sort of material upon which words or figures can be expressed :
- (3.) "Write," "written" and "writing" include every mode in which words or figures can be expressed upon material :
- (4.) "Instrument" means and includes every written document :
- (5.) "Stamp" means as well a stamp impressed by means of a die as an adhesive stamp :
- (6.) "Stamped," with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto :
- (7.) "Executed" and "execution," with reference to instruments not under seal, mean signed and signature :
- (8.) "Money" includes all sums expressed in British or in any foreign or colonial currency :
- (9.) "Stock" means and includes any share in any stocks or funds transferable at the Bank of England or at the Bank of Ireland, and India promissory notes, and any share in the stocks or funds of any foreign or colonial state or government, or in the capital stock or funded debt of any company, corporation or society in the United Kingdom, or of any foreign or colonial company, corporation or society :
- (10.) "Marketable security" means a security of such a description as to be capable of being sold in any stock market in the United Kingdom :
- (11.) "Person" includes company, corporation and society :
- (12.) "Steward" of a manor includes deputy steward.

Grant of
duties in
schedule.

3. From and after the commencement of this Act, and subject to the exemptions contained in the schedule to this Act, and in any other Acts for the time being in force, there shall be charged for the use of Her Majesty, her heirs and successors, upon the

several instruments specified in the schedule to this Act, the several duties in the said schedule specified, and no other duties.

4. Any instrument which by any Act heretofore passed, and not relating to stamp duties, is specifically charged with the duty of thirty-five shillings shall, from and after the commencement of this Act, be chargeable only with the duty of ten shillings in lieu of the said duty of thirty-five shillings.

5. Except where express provision to the contrary is made by this or any other Act, an instrument relating to property belonging to the Crown, or being the private property of the Sovereign, is to be charged with the same duty as an instrument of the same kind relating to property belonging to a subject.

6. (1.) All stamp duties which may from time to time be chargeable by law upon any instruments are to be paid and denoted according to the general and special regulations in this Act contained.

(2.) The said schedule, and everything therein contained, is to be read and construed as part of this Act.

GENERAL REGULATIONS.

7. (1.) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument written upon the same piece of material.

(2.) If more than one instrument be written upon the same piece of material, every one of such instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

8. Except where express provision to the contrary is made by this or any other Act,

(1.) An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as it were a separate instrument, with duty in respect of each of such matters.

(2.) An instrument made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, is to be charged with duty in respect of such last-mentioned consideration or considerations as if it were a separate instrument made for such consideration or considerations only.

9. (1.) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or if used, is not to be available, for an instrument of any other description.

(2.) An instrument falling under the particular description to which

As to instruments charged with the duty of 35s.

As to instruments relating to property belonging to the Crown.

All duties to be paid according to the regulations of this Act, and the schedule to be read as

part of this Act.

How instruments are to be written and stamped.

Instruments to be separately charged with duty in certain cases.

As to the use of appropriated stamps.

any stamp is so appropriated as aforesaid is not to be deemed duly stamped, unless it is stamped with the stamp so appropriated.

Facts and circumstances affecting duty to be set forth in instruments.

10. All the facts and circumstances affecting the liability of any instrument to *ad valorem* duty, or the amount of the *ad valorem* duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud Her Majesty, or her heirs or successors,

- (1.) Executes any instrument in which all the said facts and circumstances are not fully and truly set forth;
- (2.) Being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

Penalty, 10*l*.

shall forfeit the sum of ten pounds.

Money in foreign or colonial currency to be valued.

11. Where an instrument is chargeable with *ad valorem* duty in respect of any money in any foreign or colonial currency, such duty shall be calculated on the value of such money in British currency according to the current rate of exchange on the day of the date of the instrument.

Stock and marketable securities to be valued.

12. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Effect of statement of value.

13. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it is, so far as regards the subject-matter of such statement, to be deemed duly stamped, unless or until it is shown that such statement is untrue, and that the instrument is in fact insufficiently stamped.

As to denoting stamp.

14. Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, if application be made to the Commissioners for that purpose, and on production of both the instruments, be denoted in such manner as the Commissioners think fit upon such first-mentioned instrument.

Terms upon which instruments may be stamped after execution.

15. (1.) Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also, by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of five pounds *per centum per annum*, from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty.

And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

Proviso.

(2.) Provided as follows:

As to instruments executed abroad.

- (a.) Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom may be stamped, at any time within two months

after it has been first received in the United Kingdom, on payment of the unpaid duty only ;

- (b.) The commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties, or any part thereof. As to the remission of penalties.

16. [Terms upon which unstamped or insufficiently stamped instruments may be received in evidence in any court.]

17. [Instrument not duly stamped inadmissible (except in criminal proceedings)].

18. (1.) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion as to duty. The Commissioners may be required to express their opinion as to duty.
 to express their opinion with reference to any executed instrument may be required to express their opinion as to duty.

(a.) Whether it is chargeable with any duty :

(b.) With what amount of duty it is chargeable.

(2.) If the Commissioners are of opinion that the instrument is not chargeable with any duty, such instrument may be stamped with a particular stamp denoting that it is not chargeable with any duty. Mode and effect of proceeding.

(3.) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and if or when the instrument is duly stamped in accordance with the assessment of the Commissioners, it may be also stamped with a particular stamp denoting that it is duly stamped.

(4.) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence, and available for all purposes, notwithstanding any objection relating to duty.

(5.) Provided as follows :

Provisoes.

(a.) An instrument upon which the duty has been assessed by the Commissioners shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of the Commissioners ;

(b.) Nothing in this section contained extends to any instrument chargeable with duty, and made as a security for money or stock without limit ;

(c.) Nothing in this section contained shall be deemed to authorize the stamping after the execution thereof of any instrument prohibited by law from being so stamped.

19. [Person dissatisfied may appeal.]

20. [The Commissioners may call for and refuse to proceed without evidence.]

23. Except where express provision is made to the contrary, all duties are to be denoted by impressed stamps only. How duties to be denoted.

General direction as to the cancellation of adhesive stamps.

24. (1.) An instrument, the duty upon which is required, or permitted by law, to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled and rendered incapable of being used for any other instrument, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

Penalty for neglect or refusal, £10.

(2.) Every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid shall forfeit the sum of ten pounds.

25. Any person who—

Penalty for frauds in relation to adhesive stamps,

(1.) Fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes any adhesive stamp which has been so removed to any other instrument with intent that such stamp may be used again ;

(2.) Sells, or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid ;

(3.) Practises or is concerned in any fraudulent act, contrivance or device not specially provided for, with intent to defraud Her Majesty, her heirs or successors, of any duty,

or to any duty, £50.

shall forfeit, over and above any other penalty to which he may be liable, the sum of fifty pounds.

26. [Recovery and mitigation of penalties.]

SPECIAL REGULATIONS.

As to Agreements.

Duty may be denoted by adhesive stamp.

36. The duty of sixpence upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

37. [As to Appointments, &c., to Ecclesiastical Benefices, &c.]

As to Appraisements.

Appraisements to be written out. Penalty on the appraiser, £50.

38. (1.) Every appraiser by whom an appraisement or valuation is made shall, within fourteen days after the making thereof, write out the same, in words and figures showing the full amount thereof, upon duly stamped material, and if he neglects or omits so to do, or in any other manner delivers out, or states the amount of, any such appraisement or valuation, shall forfeit the sum of fifty pounds.

(2.) Any person who receives from any appraiser, or pays for the making of, any appraisal or valuation, unless the same be written out and stamped as aforesaid, shall forfeit the sum of £20. twenty pounds.

As to Instruments of Apprenticeship.

39. Every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment (except articles of clerkship to attorneys and others hereby specifically charged with duty,) is to be deemed an instrument of apprenticeship.

40. The full sum of money, and the value of any other matter or thing, paid, given or assigned, or secured to be paid, given or assigned, to or for the benefit of the master with or in respect of any apprentice clerk or servant (not being a person bound to serve in order to admission in any court,) is to be fully and truly set forth in an instrument of apprenticeship; and if any such sum, or other matter or thing, be paid, given, assigned or secured as aforesaid, and no such instrument be made, or if any such instrument be made, and such sum, or the value of such other matter or thing, be not set forth therein as aforesaid, the master, and also the apprentice himself, if of full age, and any other person being a party to the contract, or by whom any such sum, or other matter or thing, is paid, given, assigned or secured, shall forfeit the sum of twenty pounds, and the contract, and the instrument (if any) containing the same, shall be null and void.

45-55.—*As to Bank Notes, Bills of Exchange and Promissory Notes.*

48. (1.) The term "bill of exchange" for the purposes of this Act includes also draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned.

(2.) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand.

(3.) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also any order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person

on his behalf, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand.

Interpre-
tation of
term "pro-
missory
note."

49. (1.) The term "promissory note" means and includes any document or writing (except a bank note) containing a promise to pay any sum of money.

(2.) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a promissory note for the said sum of money.

The fixed
duty may
be de-
noted by
adhesive
stamp.

50. The fixed duty of one penny on a bill of exchange for the payment of money on demand may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the bill is signed, before he delivers it out of his hands, custody or power.

Ad valorem
duties to
be denoted
in certain
cases by
adhesive
stamps.

51. (1.) The *ad valorem* duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

(2.) Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays, such bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.

Provisoos
for the
protection
of *bond
fide*
holders ;

(3.) Provided as follows :—

(a.) If at the time when any such bill or note comes into the hands of any *bond fide* holder thereof there is affixed thereto an adhesive stamp effectually obliterated, and purporting and appearing to be duly cancelled, such stamp shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person ;

(b.) If at the time when any such bill or note comes into the hands of any *bond fide* holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp, as if he were the person by whom it was affixed, and upon his so doing such bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed.

not to
relieve any
other
person.

(4.) But neither of the foregoing provisoes is to relieve any person from any penalty incurred by him for not cancelling any adhesive stamp.

Bills and
notes pur-
porting to
be drawn
&c. abroad
to be

52. A bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is, for the purposes of this Act, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

53. (1.) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount

but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings, if the bill or note be not then payable according to its tenor, and of ten pounds, if the same be so payable.

(2.) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

54. (1.) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall forfeit the sum of ten pounds, and the person who takes or receives from any other person any such bill or note not being duly stamped, either in payment or as a security, or by purchase, or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

(2.) Provided that if any bill of exchange for the payment of money on demand, liable only to the duty of one penny, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same, as if he had been the drawer of the bill, and may, upon so doing, pay the sum in the said bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum, and such bill is, so far as respects the duty, to be deemed good and valid.

(3.) But the foregoing proviso is not to relieve any person from any penalty he may have incurred in relation to such bill.

55. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill, of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

As to Bills of Lading.

56. (1.) A bill of lading is not to be stamped after the execution thereof.

(2.) Every person who makes or executes any bill of lading not duly stamped shall forfeit the sum of fifty pounds.

As to Bills of Sale.

57. A copy of a bill of sale is not to be filed in any court, unless the original, duly stamped, is produced to the proper officer.

As to Bonds given in relation to the Duties of Excise.

58. [Bonds not to include goods, &c., belonging to more than one person. Penalty fifty pounds.]

59-64. *As to the Certificates of Attorneys and others.*

Penalty on unqualified persons preparing instruments, £50. 60. Every person who (not being a serjeant-at-law, barrister, or a duly certificated attorney, solicitor, proctor, notary public, writer to the signet, agent, procurator, conveyancer, special pleader, or draftsman in equity), either directly or indirectly, for or in expectation of any fee, gain or reward, draws or prepares any instrument relating to real or personal estate, or any proceedings in law or equity, shall forfeit the sum of fifty pounds.

Proviso. Provided as follows :—

(1.) This section does not extend to—

- (a.) Any public officer drawing or preparing instruments in the course of his duty ;
- (b.) Any person employed merely to engross any instrument or proceedings.

(2.) The term “instrument” in this section does not include—

- (a.) Wills or other testamentary instruments ;
- (b.) Agreements under hand only ;
- (c.) Letters or powers of attorney ;
- (d.) Transfers of stock containing no trust or limitation thereof.

66-68. *As to Charter-parties.**As to Contract Notes (a).*

Duty may be denoted by adhesive stamp. 69. (1.) The duty on a contract note may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the note is first executed.

Penalty for making an unstamped note, £20 ; and no brokerage &c. recoverable. (2.) Every person who makes or executes any contract note chargeable with duty, and not being duly stamped, shall forfeit the sum of twenty pounds.

(3.) No broker, agent or other person shall have any legal claim to any charge for brokerage, commission or agency, with reference to the sale or purchase of any stock or marketable security of the value of five pounds or upwards mentioned or referred to in any contract note, unless such note is duly stamped.

As to Conveyances on Sale.

Interpretation of term. 70. The term “conveyance on sale” includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, upon the sale thereof, is legally or equitably transferred to or vested in the purchaser, or any other person on his behalf or by his direction.

(a) “Contract note” means exclusively an advice note sent by a broker or agent to his principal, and does not include any memorandum or contract between brokers or agents for or in relation to the sale or purchase of any stock or marketable security ; and no such memorandum or contract is chargeable with any stamp duty ; 41 Vict. c. 15, s. 1.

71. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the value of such stock or security. How *ad valorem* duty to be calculated

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon such security. in respect of stock and securities.

72. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on such total amount. How consideration consisting of periodical payments to be charged.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument.

(4.) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than ten shillings.

73. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty. How conveyance in consideration of a debt, or subject to future payment &c. to be charged.

74. (1.) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration. Direction as to duty in certain cases.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any

person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with *ad valorem* duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(5.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be exempt from the said *ad valorem* duty, and chargeable only with the duty to which it may be liable under any general description, but such last-mentioned duty shall not exceed the *ad valorem* duty.

As to the sale of an annuity or right not before in existence.

75. Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all the purposes of this Act to be deemed an instrument of conveyance on sale.

Where several instruments, the principal instrument only to be charged with *ad valorem* duty. Principal instrument, how

76. Where there are several instruments for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

77. (1.) In the cases below specified the principal instrument is to be ascertained in the following manner :

- (a.) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument ;
- (b.) In other cases of copyhold or customary estates, the sur-

render or grant, if made out of court, or the memorandum to be as-
thereof, and the copy of court roll of the surrender or certain-
grant, if made in court, shall be deemed the principal
instrument ;

- (c.) Where in Scotland there is a disposition or assignation exe-
cuted by the seller, and any other instrument is executed
for completing the title, the disposition or assignation is
to be deemed the principal instrument.

(2.) In any other case the parties may determine for themselves
which of several instruments is to be deemed the principal instru-
ment, and may pay the *ad valorem* duty thereon accordingly.

As to Conveyances on any occasion except Sale or Mortgage.

78. Every instrument, and every decree or order of any court or What is to
of any commissioners, whereby any property on any occasion, except be deemed
a sale or mortgage, is transferred to or vested in any person, is a convey-
chargeable with duty as a conveyance or transfer of property. ance on

Provided that a conveyance or transfer made for effectuating the any occa-
appointment of a new trustee is not to be charged with any higher sion, not
duty than ten shillings. being a
sale or
mortgage.

As to attested Copies and Extracts.

79. An attested or otherwise authenticated copy or extract of or Certain
from— copies and
extracts
may be
stamped
without
penalty
within 14
days after
attestation.

- (1.) An instrument chargeable with any duty ;
(2.) An original will, testament or codicil ;
(3.) The probate or probate copy of a will or codicil ;
(4.) Letters of administration or a confirmation of a testament ;
may be stamped at any time within fourteen days after the date of
the attestation or authentication, on payment of the duty only with-
out any penalty.

As to certified Copies and Extracts from Registers of Births, &c.

80. The duty upon a certified copy or extract of or from any By whom
register of births, baptisms, marriages, deaths or burials is to be duty to be
paid by the person requiring the copy or extract, and may be denoted paid ; may
by an adhesive stamp, which is to be cancelled by the person by be denoted
whom the copy or extract is signed, before he delivers the same out by adhesive
of his hands, custody or power. stamp.

As to Copyhold and Customary Estates.

81. (1.) The copy of court roll of a surrender or grant made out of Payment
court shall not be admissible or available as evidence of the surrender of duty
or grant, unless the surrender or grant, or the memorandum thereof, to be
is duly stamped, of which fact the certificate of the steward of the certified.
manor on the face of such copy shall be sufficient evidence.

- (2.) The entry upon the court rolls of a surrender or grant shall

not be admissible or available as evidence of the surrender or grant, unless the surrender or grant, if made out of court, or the memorandum thereof, or the copy of court roll of the surrender or grant, if made in court, is duly stamped, of which fact the certificate of the steward of the manor in the margin of such entry shall be sufficient evidence.

Not to be charged more than once.

Facts and circumstances affecting duty, how to be stated.

Penalty, £50.

82. No instrument is to be charged more than once with duty by reason of relating to several distinct tenements, in respect whereof several fines or fees are due to the lord or steward of the manor.

83. (1.) All the facts and circumstances affecting the liability to *ad valorem* duty of the copy of court roll of any surrender or grant made in court, or the amount of *ad valorem* duty with which any such copy of court roll is chargeable, are to be fully and truly stated in a note to be delivered to the steward of the manor before the surrender or grant is made.

(2.) Every person who, with intent to defraud Her Majesty, her heirs or successors—

(a.) Makes in court any surrender before such a note as aforesaid has been delivered to the steward of the manor ;

(b.) Being employed or concerned in or about the preparation of any such note as aforesaid, neglects or omits fully and truly to state therein all the above-mentioned facts and circumstances,

shall forfeit the sum of fifty pounds.

Steward to refuse to perform certain acts.

84. The steward of every manor shall refuse—

(1.) To accept in court any surrender, or to make in court any grant, until such a note as is required by the last preceding section has been delivered to him ;

(2.) To enter on the court rolls, or accept any presentment of, or admit any person to be tenant under or by virtue of, any surrender or grant made out of court, or any deed which is not duly stamped ;

Penalty for not refusing, £50.

Steward to make out duly stamped copies.

Penalty for neglect, £50, and to be liable for the duty.

and in any case in which he does not so refuse shall forfeit the sum of fifty pounds.

85. The steward of every manor shall, within four months from the day on which any surrender or grant is made in court, make out a duly stamped copy of court roll of such surrender or grant, and have the same ready for delivery to the person entitled thereto, and if he neglects so to do shall forfeit the sum of fifty pounds ; and the duty payable in respect of such copy of court roll shall be a debt to Her Majesty, her heirs or successors, from such steward, whether he shall have received it or not, and shall be recoverable by the summary means provided for the recovery of duties received and not applied, and if he has not received the duty, the same shall also be a debt to Her Majesty, her heirs or successors, from the party entitled to such copy, and recoverable from him in manner aforesaid.

86. The steward of any manor may, before he accepts in court any

surrender or makes in court any grant, demand and insist on the payment of his lawful fees in relation to the surrender or grant, together with the duty payable on the copy of court roll thereof, and may refuse to proceed in any such matter or to deliver such copy of court roll to any person until such fees and duty are paid.

Steward may refuse to proceed except on payment of his fees and duty.

As to Delivery Orders and Warrants for Goods.

87. The term "delivery order" means any document or writing entitling, or intended to entitle, any person therein named, or his assigns, or the holders thereof, to the delivery of any goods, wares or merchandise of the value of forty shillings or upwards lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such document or writing being signed by or on behalf of the owner of such goods, wares or merchandise, upon the sale or transfer of the property therein.

Interpretation of term.

88. The term "warrant for goods" means any document or writing, being evidence of the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods, wares or merchandise lying in any warehouse or dock, or upon any wharf, and signed or certified by or on behalf of the person having the custody of such goods, wares or merchandise.

Interpretation of term.

89. The duty upon a delivery order or warrant for goods may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is made, executed or issued.

Duty may be denoted by an adhesive stamp.

90. The duty upon a delivery order is, in the absence of any special stipulation, to be paid by the person to whom the order is given, and any person from whom a delivery order chargeable with duty is required may refuse to give it, unless or until the amount of the duty is paid to him.

By whom duty on delivery order to be paid.

91. (1.) Every document or writing in the nature of a delivery order is to be deemed to have been given upon a sale of, or transfer of the property in, goods, wares or merchandise of the value of forty shillings or upwards, unless the contrary is expressly stated therein; and every person who—

What documents to be chargeable as delivery orders.

- (a.) Untruly states, or knowingly or willingly allows it to be untruly stated, in any such document or writing, either that the transaction to which it relates is not a sale or transfer of property, or that the goods, wares or merchandise to which it relates are not of the value of forty shillings;
- (b.) Makes, signs or issues any delivery order chargeable with duty, but not being duly stamped;
- (c.) Knowingly or wilfully, either himself or by his servant or any other person, procures or requires or authorizes the delivery of, or delivers, any goods, wares or merchandise mentioned in any delivery order which is not duly stamped, or which contains to his knowledge any false statement with refer-

Penalty for making false statement, or signing, &c., or making use of, any order not duly stamped

or containing any false statement, £20.

ence either to the nature of the transaction, or the value of the goods, wares or merchandise,

shall forfeit the sum of twenty pounds.

(2.) But no delivery order is, by reason of the same being unstamped, to be deemed invalid in the hands of the person having the custody of, or delivering out, the goods, wares or merchandise therein mentioned, unless such person is proved to have been party or privy to some fraud on the revenue in relation thereto.

Penalty for making &c. unstamped warrant, £20.

92. Every person who makes, executes or issues, or receives or takes by way of security or indemnity, any warrant for goods not being duly stamped, shall forfeit the sum of twenty pounds.

As to Duplicates and Counterparts.

When duly stamped.

93. The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor) is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

As to Exchange, or Excambion, and Partition, or Division.

As to exchange or excambion &c.

94. Where upon the exchange of any real or heritable property for any other real or heritable property, or upon the partition or division of any real or heritable property, any consideration exceeding in amount or value one hundred pounds is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby such exchange or partition or division is effected is to be charged with the same *ad valorem* duty as a conveyance on sale for such consideration, and with such duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty, according to the provisions of the seventy-sixth and seventy-seventh sections of this Act.

As to Leases, &c. (b).

Agreements for not more than thirty-five years to be charged as leases.

96. (1.) An agreement for a lease or tack, or with respect to the letting of any lands, tenements or heritable subjects for any term not exceeding thirty-five years, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement.

(b) An instrument whereby the rent reserved by any other instrument chargeable with stamp duty as a lease or tack and duly stamped accordingly is increased is not chargeable with stamp duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable; 39 & 40 Vict. c. 16, s. 122.

(2.) A lease or tack made subsequently to, and in conformity with, such an agreement, duly stamped, is to be charged with the duty of sixpence only.

97. (1.) Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with *ad valorem* duty, and where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at such given sum, or according to such permanent rate.

(2.) A lease or tack or agreement made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject-matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

98. (1.) A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack or agreement of or relating to the same subject-matter.

(2.) No lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is to be charged with any duty in respect of such further consideration.

(3.) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

(4.) No lease for a definite term exceeding thirty-five years granted under the "Trinity College (Dublin) Leasing and Perpetuity Act, 1851," is to be charged with any higher duty than would have been chargeable thereon if it had been a lease for a definite term not exceeding thirty-five years.

(5.) No lease or tack, or agreement for a lease or tack, in Scotland, of any dwelling-house or tenement, or part of a dwelling-house or tenement, for any definite term not exceeding a year, at a rent not exceeding the rate of ten pounds *per annum*, is to be charged with any higher duty than one penny.

Duty in certain cases may be denoted by adhesive stamp.

99. The duty upon an instrument chargeable with duty as a lease or tack for any definite term less than a year of—

- (1.) Any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of ten pounds *per annum* ;
- (2.) Any furnished dwelling-house or apartments ;

Or upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

Penalty in certain cases.

100. (1.) Every person who executes, or prepares or is employed in preparing, any instrument upon which the duty may, under the provisions of the last preceding section, be denoted by an adhesive stamp, and which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of five pounds.

Proviso.

(2.) Provided that nothing in this section contained shall render any person liable to the said penalty of five pounds in respect of any letters or correspondence.

101. [*As to letters of allotment, scrip certificates, and scrip.*]

As to Letters or Powers of Attorney and Voting Papers.

102. [Proxies and voting papers confined to one meeting. Duty may be denoted by adhesive stamp. Penalty for executing, &c., not duly stamped, £50 ; and vote void ; may not be stamped after execution.]

Power relating to Government stocks, how to be charged.

103. A letter or power of attorney for the sale, transfer or acceptance of any of the Government or Parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds.

Order to pay dividends not power of attorney.

104. A writing under hand only containing an order, request or direction from the owner or proprietor of any stock to any company or to any officer of any company, or to any banker, to pay the dividends or interest arising from such stock to any person therein named is not chargeable with duty as a letter or power of attorney.

As to Mortgages, &c.

Interpretation of term.

105. The term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be ;

And includes—

Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack

in security, and eik to a reversion of or affecting any lands, estate or property, real or personal, heritable or moveable, whatsoever:

Also any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured :

Also any conveyance of any lands, estate or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where such conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number :

Also any defeazance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation or tack of any lands, estate or property whatsoever, apparently absolute, but intended only as a security :

Also any agreement, contract or bond accompanied with a deposit of title-deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid of any lands, estate or property comprised in such title-deeds, or for pledging or charging the same as a security :

And also any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland.

106. A security for the transfer or retransfer of any stock is to be Security for charged with the same duty as a similar security for a sum of money stock, how equal in amount to the value of such stock ; and a transfer, assign- to be ment, disposition or assignation of any such security, and a reconvey- charged. ance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of such stock.

107. (1.) A security for the payment or repayment of money to be Security lent, advanced or paid, or which may become due upon an account for future current, either with or without money previously due, is to be advances, charged, where the total amount secured or to be ultimately re- how to be coverable is in any way limited, with the same duty as a security charged. for the amount so limited.

(2.) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover.

(3.) Provided that no money to be advanced for the insurance of Proviso. any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in such

security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in such security upon the dropping of any life whereon such property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Security for repayment by periodical payments, how to be charged. 108. A security for the payment of any rentcharge, annuity or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance or payment intended to be so repaid, satisfied or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.

As to transfers and further charges. 109. No transfer of a duly stamped security, and no security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is to be charged with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

As to copyholds. 110. (1.) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the *ad valorem* duty is to be charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.

(2.) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is to be charged with duty as if the surrender or grant were not made upon a mortgage; but such last-mentioned duty shall not exceed the said *ad valorem* duty.

As to mortgage with conveyance of equity of redemption. 111. An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any other duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to, or in trust for, or according to the direction of, a purchaser.

Exemption from stamp duty in favour of benefit building societies restricted. Foreign 112. The exemption from stamp duty conferred by the act of the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage to be made after the passing of this act, except a mortgage by a member of a benefit building society for securing the re-payment to the society of money not exceeding five hundred pounds.

115. The commissioners may at any time, without reference to the date thereof, allow any foreign security to be stamped without the payment of any penalty, upon being satisfied, in any manner that they may think proper, that it was not made or issued, and has

not been transferred, assigned or negotiated, within the United Kingdom, and that no interest has been paid thereon within the United Kingdom (a).

116. [As to Notarial Acts.]

may be stamped without penalty.

As to Receipts.

120. The term "receipt" means and includes any note, memorandum, or writing whatsoever whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

Interpretation of term.

121. The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

Duty may be denoted by adhesive stamp.

122. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following; that is to say,

- (1.) Within fourteen days after it has been given, on payment of the duty and a penalty of five pounds;
- (2.) After fourteen days, but within one month, after it has been given, on payment of the duty and a penalty of ten pounds;

Terms upon which receipts may be stamped after execution.

and shall not in any other case be stamped with an impressed stamp.

123. If any person—

- (1.) Gives any receipt liable to duty and not duly stamped;
- (2.) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped;
- (3.) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid with intent to evade the duty;

Penalty for offences.

he shall forfeit the sum of ten pounds.

127. [As to Share Warrants.]

(a) "Foreign security" means every security for money by or on behalf of any foreign or colonial state, government, municipal body, corporation or company, bearing date or signed after the 3rd day of June, 1862 (except an instrument chargeable with duty as a bill of exchange or promissory note): (1) which is made or issued in the United Kingdom; or (2) which, the interest thereon being payable in the United Kingdom, is assigned, transferred or in any manner negotiated in the United Kingdom; 34 Vict. c. 4, s. 2. Every person who in the United Kingdom makes, issues, assigns, transfers or negotiates any foreign security not being duly stamped shall forfeit the sum of twenty pounds; *ib. s. 3.*

As to transfers of Shares in Cost Book Mines.

- Duty may be denoted by adhesive stamp. 128. (1.) The duty upon a request or authority to the purser or other officer of a mining company conducted on the cost book system to enter or register the transfer of any share or part of a share of the mine, and the duty upon a notice to such purser or officer of any such transfer, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the request, authority or notice is written or executed.
- Penalty for signing, &c., £20. (2.) Every person who writes or executes any such request, authority or notice not being duly stamped, and every purser or other officer of any such company who in any manner obeys, complies with, or gives effect to, any such request, authority or notice not being duly stamped, shall forfeit the sum of twenty pounds.

EXTRACT FROM SCHEDULE.

	£	s.	d.
AGREEMENT or CONTRACT, accompanied with a deposit. See <i>Mortgage</i> , &c., and section 105.			
AGREEMENT for a lease or tack, or for any letting. See <i>Lease</i> or <i>Tack</i> , and section 96.			
AGREEMENT or CONTRACT made or entered into, pursuant to the Highway Acts, for or relating to the making, maintaining or repairing of highways	0	0	6
AGREEMENT, or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument . .	0	0	6

Exemptions.

- (1.) Agreement or memorandum the matter whereof is not of the value of 5*l*.
 - (2.) Agreement or memorandum for the hire of any labourer, artificer, manufacturer or menial servant.
 - (3.) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares or merchandise.
 - (4.) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.
- And see section 36.

£ s. d.

ANNUITY, conveyance in consideration of.

See *Conveyance on Sale*, and section 72.
purchase of.See *Conveyance on Sale*, and section 75.
creation of, by way of security.See *Mortgage, &c.*, and section 108.

instruments relating to, upon any other occasion.

See *Bond, Covenant, &c.*APPOINTMENT of a new trustee, and APPOINTMENT, in
execution of a power, of any property, or of any use,
share or interest in any property, by any instrument
not being a will

0 10 0

And see section 78.

APPRAISEMENT or VALUATION of any property, or of any
interest therein, or of the annual value thereof, or of
any dilapidations, or of any repairs wanted, or of the
materials and labour used or to be used in any building,
or of any artificer's work whatsoever.Where the amount of the appraisement or valuation
does not exceed 5*l.*

0 0 3

Exceeds 5*l.* and does not exceed 10*l.*

0 0 6

,, 10*l.* ,, 20*l.*

0 1 0

,, 20*l.* ,, 30*l.*

0 1 6

,, 30*l.* ,, 40*l.*

0 2 0

,, 40*l.* ,, 50*l.*

0 2 6

,, 50*l.* ,, 100*l.*

0 5 0

,, 100*l.* ,, 200*l.*

0 10 0

,, 200*l.* ,, 500*l.*

0 15 0

,, 500*l.*

1 0 0

Exemptions.

- (1.) Appraisement or valuation made for, and for the
information of, one party only, and not being in
any manner obligatory as between parties either
by agreement or operation of law.
- (2.) Appraisement or valuation made in pursuance of
the order of any Court of Admiralty or Vice-
Admiralty, or of any court of appeal from any
sentence, adjudication, or judgment of any
Court of Admiralty or Vice-Admiralty.
- (3.) Appraisement or valuation of any property made
for the purpose of ascertaining the legacy or suc-
cession duty payable in respect thereof.

And see section 38.

APPRENTICESHIP, instrument of.

Where there is no premium or consideration 0 2 6

In any other case—	£	s.	d.
For every 5 <i>l.</i> , and also for any fractional part of 5 <i>l.</i> , of the amount or value of the premium or consideration	0	5	0

Exemptions.

- (1.) Instrument relating to any poor child apprenticed by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to any act for the regulation of parish apprentices.
- (2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed 10*l.*

And see sections 39 and 40.

ASSIGNMENT OF ASSIGNATION.

By way of security, or of any security. See *Mortgage, &c.*

Upon a sale, or otherwise. See *Conveyance*.

ASSURANCE OF INSURANCE. See *Policy*.

ATTESTED COPY. See *Copy*.

ATTORNEY, LETTER OF POWER OF. See *Letter of Attorney*.

WARRANT OF. See *Warrant of Attorney*.

AWARD in England or Ireland, and AWARD or DECREE ARBITRAL in Scotland.

Where the amount or value of the matter in dispute does not exceed 5 <i>l.</i>	0	0	0
Exceeds 5 <i>l.</i> and does not exceed 10 <i>l.</i>	0	0	6
„ 10 <i>l.</i> „ 20 <i>l.</i>	0	1	0
„ 20 <i>l.</i> „ 30 <i>l.</i>	0	1	6
„ 30 <i>l.</i> „ 40 <i>l.</i>	0	2	0
„ 40 <i>l.</i> „ 50 <i>l.</i>	0	2	6
„ 50 <i>l.</i> „ 100 <i>l.</i>	0	5	0
„ 100 <i>l.</i> „ 200 <i>l.</i>	0	10	0
„ 200 <i>l.</i> „ 500 <i>l.</i>	0	15	0
„ 500 <i>l.</i> „ 750 <i>l.</i>	1	0	0
„ 750 <i>l.</i> „ 1,000 <i>l.</i>	1	5	0
And where it exceeds 1,000 <i>l.</i> , and in any other case not above provided for	1	15	0

BACK BOND. See *Mortgage, &c.*, and section 105.

BILL OF EXCHANGE—

Payable on demand 0 0 1

BILL OF EXCHANGE of any other kind whatsoever (except a Bank Note), and **PROMISSORY NOTE** of any kind whatsoever (except a Bank Note), drawn, or expressed to be

payable, or actually paid, or endorsed, or in any £ s. d.
manner negotiated, in the United Kingdom.

Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5 <i>l</i> .				0	0	1
Exceeds 5 <i>l</i> . and does not exceed 10 <i>l</i> .				0	0	2
„ 10 <i>l</i> .	„ 25 <i>l</i> .	.	.	0	0	3
„ 25 <i>l</i> .	„ 50 <i>l</i> .	.	.	0	0	6
„ 50 <i>l</i> .	„ 75 <i>l</i> .	.	.	0	0	9
„ 75 <i>l</i> .	„ 100 <i>l</i> .	.	.	0	1	0
„ 100 <i>l</i> .— for every 100 <i>l</i> ., and also for any fractional part of 100 <i>l</i> ., of such amount or value				0	1	0

Exemptions.

[Certain transactions between bankers, &c.]

And see sections 48, 49, 50, 51, 52, 53, 54, and 55.

BILL OF LADING of or for any goods, merchandise or
effects to be exported or carried coastwise . . . 0 0 6

And see section 56.

BILL OF SALE—

Absolute. See *Conveyance on Sale*.

By way of security. See *Mortgage, &c*.

And see section 57.

BOND for securing the payment or repayment of money, or
the transfer or retransfer of stock.

See *Mortgage, &c*.

BOND in relation to any annuity upon the original crea-
tion and sale thereof.

See *Conveyance on Sale*, and section 75.

BOND, COVENANT or INSTRUMENT of any kind what-
soever.

(1.) Being the only or principal or primary security
for any annuity (except upon the original creation
thereof by way of sale or security), or of any sum or
sums of money at stated periods, not being
interest for any principal sum secured by a duly
stamped instrument, nor rent reserved by a lease
or tack.

For a definite and certain period, so that
the total amount to be ultimately payable
can be ascertained.

The same *ad va-
lorem* duty as
a bond or
covenant for
such total
amount.

For the term of life or any other indefinite
period.

For every 5*l*., and also for any fractional part
of 5*l*., of the annuity or sum periodically
payable

0 2 6

(2.) Being a collateral or auxiliary or additional or

substituted security for any of the above-men- £ s. d.
tioned purposes, where the principal or primary
instrument is duly stamped.

Where the total amount to be ultimately
payable can be ascertained

The same *ad va-
lorem* duty as
a bond or
covenant of
the same kind
for such total
amount.

In any other case :

For every 5*l.*, and also for any fractional part of
5*l.*, of the annuity or sum periodically payable

0 0 6

BOND given pursuant to the directions of any Act of
Parliament, or by the directions of the Commissioners
of Customs or Inland Revenue, or any of their officers,
for or in respect of any of the duties of customs or
excise, or for preventing frauds or evasions thereof, or
for any other matter or thing relating thereto.

Where the penalty of the bond does not exceed
150*l.*

The same *ad va-
lorem* duty as
a bond for
the amount of
the penalty.

And in any other case

0 5 0

Exemption.

Bond given as aforesaid upon, or with relation to,
the receiving or obtaining, or for entitling any
person to receive or obtain, any drawback of any
duty or duties, or part of any duty or duties, of
customs or excise, for or in respect of any goods,
wares or merchandise exported, or shipped to be
exported, from the United Kingdom to any parts
beyond the seas, or upon or with relation to the
obtaining of any debenture or certificate for en-
titled any person to receive any such drawback
as aforesaid.

And see section 58.

BOND on obtaining letters of administration in England
or Ireland, or a confirmation of testament in Scotland

0 5 0

Exemptions.

(1.) Bond given by the widow, child, father, mother,
brother or sister of any common seaman,
marine or soldier slain or dying in the service
of her Majesty, her heirs or successors.

(2.) Bond given by any person where the estate to be
administered does not exceed 100*l.* in value.

BOND of any kind whatsoever not specifically charged
with any duty :

Where the amount limited to be recoverable
does not exceed 300*l.*

The same *ad va-
lorem* duty as
a bond for
the amount
limited.

In any other case

0 10 0

BOND accompanied with a deposit of title-deeds, for making a mortgage, wadset or other security on any estate or property therein comprised. £ s. d.

See *Mortgage, &c.*, and section 105.

BOND, DECLARATION or other DEED or WRITING for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.

See *Mortgage, &c.*, and section 105.

CERTIFICATE of any goods, wares or merchandise, having been duly entered inwards, which shall be entered outwards, for exportation at the port of importation, or be removed from thence to any other port for the more convenient exportation thereof, where such certificate is issued for enabling any person to obtain a debenture or certificate entitling him to receive any drawback of any duty or duties of customs, or any part thereof .

0 4 0

CHARTER of resignation, or of conformation, or of novodamus, or upon apprising, or upon a decret of adjudication, or sale of any lands or other heritable subjects in Scotland

0 5 0

CLARE CONSTAT. See *Precept*.

COMMISSION in the nature of a power of attorney in Scotland. See *Letter or Power of Attorney*.

CONDITIONAL SURRENDER of any copyhold or customary estate by way of mortgage.

See *Mortgage, &c.*, and sections 105 and 110.

CONTRACT. See *Agreement*.

CONTRACT NOTE.—Any note, memorandum or writing, commonly called a “contract note,” or by whatever name the same may be designated, for or relating to the sale or purchase of any stock or marketable security of the value of 5*l.* or upwards

0 0 1

And see section 69.

CONVEYANCE or TRANSFER, whether on sale or otherwise,—

(1.) Of any stock of the governor and company of the Bank of England

0 7 9

(2.) Of any stock of the East India Company . . .

1 10 0

(3.) Of any debenture stock or funded debt of any company or corporation.

For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount transferred

0 2 6

And see section 78.

CONVEYANCE or TRANSFER on sale, Of any property (except such stock or debenture stock or funded debt as aforesaid), Where the amount or value of the consideration for the sale does not exceed 5 <i>l</i> .		£	s.	d.
Exceeds 5 <i>l</i> ., and does not exceed 10 <i>l</i> .	.	0	0	6
„ 10 <i>l</i> .	„ 15 <i>l</i> .	0	1	0
„ 15 <i>l</i> .	„ 20 <i>l</i> .	0	1	6
„ 20 <i>l</i> .	„ 25 <i>l</i> .	0	2	0
„ 25 <i>l</i> .	„ 50 <i>l</i> .	0	2	6
„ 50 <i>l</i> .	„ 75 <i>l</i> .	0	5	0
„ 75 <i>l</i> .	„ 100 <i>l</i> .	0	7	6
„ 100 <i>l</i> .	„ 125 <i>l</i> .	0	10	0
„ 125 <i>l</i> .	„ 150 <i>l</i> .	0	12	6
„ 150 <i>l</i> .	„ 175 <i>l</i> .	0	15	0
„ 175 <i>l</i> .	„ 200 <i>l</i> .	0	17	6
„ 200 <i>l</i> .	„ 225 <i>l</i> .	1	0	0
„ 225 <i>l</i> .	„ 250 <i>l</i> .	1	2	6
„ 250 <i>l</i> .	„ 275 <i>l</i> .	1	5	0
„ 275 <i>l</i> .	„ 300 <i>l</i> .	1	7	6
„ 300 <i>l</i> .		1	10	0
For every 50 <i>l</i> ., and also for any fractional part of 50 <i>l</i> ., of such amount or value		0	5	0
And see sections 70, 71, 72, 73, 74, 75, 76, and 77.				
CONVEYANCE or TRANSFER by way of security of any pro- perty (except such stock or debenture stock or funded debt as aforesaid), or of any security. See <i>Mortgage, &c.</i>				
CONVEYANCE or TRANSFER of any kind not hereinbefore described		0	10	0
And see section 78.				
COPY or EXTRACT (attested or in any manner authenti- cated) of or from—				
(1.) An instrument chargeable with any duty.				
(2.) An original will, testament or codicil.				
(3.) The probate, or probate copy, of a will or codicil.				
(4.) Any letters of administration, or any confirmation of a testament.				
(5.) Any public register (except any register of births, baptism, marriages, deaths or burials).				
(6.) The books, rolls or records of any court.				
In the case of an instrument chargeable { with any duty not amounting to one shilling		The same duty as such in- strument.		
In any other case		0	1	0
<i>Exemptions.</i>				
(1.) Copy or extract of or from any law proceedings.				
(2.) Copy or extract in Scotland of or from the com-				

mission of any person as a delegate or representative to the convention of royal burghs or the general assembly or any presbytery or church court. £ s. d.

And see section 79.

COPY or EXTRACT (certified) of or from any register of births, baptisms, marriages, deaths or burials . . . 0 0 1

Exemptions.

- (1.) Copy or extract furnished by any clergyman, registrar or other official person pursuant to and for the purposes of any Act of Parliament, or furnished to any general or superintending registrar under any general regulation.
- (2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

And see section 80.

COPYHOLD and CUSTOMARY ESTATES—Instruments relating thereto.

Upon a sale thereof. See *Conveyance on Sale*.

Upon a mortgage thereof. See *Mortgage, &c.*

Upon a demise thereof. See *Lease or Tack*.

Upon any other occasion.

Surrender or grant made out of court, or the memorandum thereof, and copy of court roll of any surrender or grant made in court . . . 0 10 0

And see sections 81, 82, 83, 84, 85, and 86.

COST BOOK MINES. See *Transfer*.

COUNTERPART. See *Duplicate*.

COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock.
See *Mortgage, &c.*

COVENANT in relation to any annuity upon the original creation and sale thereof.

See *Conveyance on Sale*, and section 75.

COVENANT in relation to any annuity (except upon the original creation and sale thereof) or to other periodical payments.

See *Bond, Covenant, &c.*

COVENANT. Any separate deed of covenant (not being an instrument chargeable with *ad valorem* duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title

relating thereto, or to all or any of the matters afore- £ s. d
said.

Where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed 10s. } A duty equal to the amount of such *ad valorem* duty.

In any other case 0 10 0

CUSTOMARY ESTATES. See *Copyhold*.

DEBENTURE for securing the payment or repayment of money or the transfer or retransfer of stock.

See *Mortgage*, &c.

DEBENTURE or CERTIFICATE for entitling any person to receive any drawback of any duty or duties, or part of any duty or duties, of customs or excise, or any bounty payable out of the revenue of customs or excise, for or in respect of any goods, wares or merchandise exported, or shipped to be exported, from any part of the United Kingdom to any part beyond the sea.

Where the drawback or bounty to be received does not exceed 10l. 0 1 0
Exceeds 10l. and does not exceed 50l. 0 2 6
Exceeds 50l. 0 5 0

DECLARATION of any use or trust of or concerning any property by any writing, not being a deed or will, or an instrument chargeable with *ad valorem* duty as a settlement 0 10 0

DECREET ARBITRAL. See *Award*.

DEED whereby any real burden is declared or created on lands or heritable subjects in Scotland.

See *Mortgage*, &c., and section 105.

DEED containing an obligation to infeft any person in heritable subjects in Scotland, under a clause of reversion, as a security for money.

See *Mortgage*, &c., and section 105.

DEED containing an obligation to infeft or seize in an annuity to be uplifted out of heritable subjects in Scotland.

See *Bond, Covenant*, &c.

DEED of any kind whatsoever, not described in this schedule 0 10 0

DEFEAZANCE. Deed or other instrument of defeazance of any conveyance, disposition, assignation or tack, apparently absolute, but intended only as a security for money or stock.

See *Mortgage*, &c., and section 105.

DELIVERY ORDER	£	s.	d.
And see sections 87, 89, 90, and 91.	0	0	1
DEPOSIT of title-deeds. See <i>Mortgage</i> , &c., and section 105.			
DISPOSITION of heritable property in Scotland to singular successors or purchasers. See <i>Conveyance on Sale</i> .			
DISPOSITION of heritable property in Scotland to a purchaser, containing a clause declaring all or any part of the purchase-money a real burden upon, or affecting, the heritable property thereby disposed, or any part thereof. See <i>Conveyance on Sale</i> , <i>Mortgage</i> , &c., and section 105.			
DISPOSITION in Scotland containing constitution of feu or ground annual right. See <i>Conveyance on Sale</i> , and section 72.			
DISPOSITION in security in Scotland. See <i>Mortgage</i> , &c.			
DISPOSITION of any wadset, heritable bond, &c. See <i>Mortgage</i> , &c.			
DISPOSITION in Scotland of any property or of any right or interest therein not described in this schedule	0	10	0
DOCK WARRANT. See <i>Warrant for Goods</i> .			
DRAFT for money. See <i>Bill of Exchange</i> , and section 48.			
DUPLICATE or COUNTERPART of any instrument chargeable with any duty.			
Where such duty does not amount to 5s.	{	The same duty as the original instrument.	
In any other case			
And see section 93.		0	5 0
HEIR to a reversion. See <i>Mortgage</i> , &c., and section 105.			
EXCHANGE or EXCAMBION—Instruments effecting.			
In the case specified in section 94, see that section.			
In any other case		0	10
EXTRACT. See <i>Copy</i> or <i>Extract</i> .			

FACTORY, in the nature of a letter or power of attorney in Scotland. £ s. d.

See *Letter or Power of Attorney*.

FEU CONTRACT in Scotland. See *Conveyance on Sale*, and section 72.

FOREIGN SECURITY. See *Mortgage, &c.*, and sections 113, 114, and 115.

FURTHER CHARGE or FURTHER SECURITY. See *Mortgage, &c.*, and section 109.

GRANT of copyhold or customary estates. See *Conveyance—Copyhold*.

HERITABLE BOND. See *Mortgage, &c.*, and section 105.

INVENTORY. See *Schedule*.

LEASE or TACK—

(1.) For any definite term less than a year :

- | | |
|---|-------|
| (a.) Of any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of 10 <i>l. per annum</i> | 0 0 1 |
| (b.) Of any furnished dwelling-house or apartments, where the rent for such term exceeds 25 <i>l.</i> | 0 2 6 |

(c.) Of any lands, tenements or heritable subjects except or otherwise than as aforesaid	{ The same duty as a lease for a year at the rent reserved for the definite term.
--	---

(2.) For any other definite term or for any indefinite term :

Of any lands, tenements or heritable subjects—

Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security :

In respect of such consideration	{ The same duty as a conveyance on a sale for the same consideration.
----------------------------------	---

Where the consideration or any part of the consideration is any rent :

In respect of such consideration :

If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate :

	If the term is definite, and does not exceed 35 years, or is indefinite.	If the term, being defi- nite, exceeds 35 years, but does not exceed 100 years.	If the term, being definite, exceeds 100 years.
	£ s. d.	£ s. d.	£ s. d.
Not exceeding 5 <i>l.</i> per annum	0 0 6	0 3 0	0 6 0
Exceeding—			
5 <i>l.</i> and not exceeding 10 <i>l.</i>	0 1 0	0 6 0	0 12 0
10 <i>l.</i> „ „ 15 <i>l.</i>	0 1 6	0 9 0	0 18 0
15 <i>l.</i> „ „ 20 <i>l.</i>	0 2 0	0 12 0	1 4 0
20 <i>l.</i> „ „ 25 <i>l.</i>	0 2 6	0 15 0	1 10 0
25 <i>l.</i> „ „ 50 <i>l.</i>	0 5 0	1 10 0	3 0 0
50 <i>l.</i> „ „ 75 <i>l.</i>	0 7 6	2 5 0	4 10 0
75 <i>l.</i> „ „ 100 <i>l.</i>	0 10 0	3 0 0	6 0 0
100 <i>l.</i>			
For every full sum of 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> thereof . . .	0 5 0	1 10 0	3 0 0

(3.) Of any other kind whatsoever not herein before described 0 10 0
And see sections 96, 97, 98, 99, and 100.

LETTER OR POWER OF ATTORNEY, or COMMISSION, FAC- £ s. d.
TORY, MANDATE, or other instrument in the nature
thereof—

- (1.) For the sole purpose of appointing or authorizing
any one person to vote as a proxy at any one
meeting at which votes may be given by proxy . 0 0 1
- (2.) By any petty officer, seaman, marine, or soldier
serving as a marine, or by the executors, or
administrators of any such person, for receiving
prize money or wages 0 1 0
- (3.) For the receipt of the dividends or interest of any
stock :
Where made for the receipt of one payment
only 0 1 0
In any other case 0 5 0
- (4.) For the receipt of any sum of money, or any
bill of exchange or promissory note for any sum
of money, not exceeding 20*l.*, or any periodical
payments not exceeding the annual sum of 10*l.*
(not being herein-before charged) 0 5 0
- (5.) For the sale, transfer or acceptance of any of
the Government or Parliamentary stocks or funds :
Where the value of such stocks or funds does
not exceed 20*l.* 0 5 0
In any other case 0 10 0
- (6.) Of any kind whatsoever not herein-before described 0 10 0

Exemptions.

- (1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend of less than 3*l*. £ s. d.
- (2.) Letter or power of attorney or proxy filed in the Court of Probate in England or Ireland, or in any ecclesiastical court.
- (3.) Letter or power of attorney for voting on any election of directors of the East India Company.
- And see sections 102, 103, and 104.

LETTER OF REVERSION in Scotland. See *Mortgage, &c.*, and section 105.

MEMORIAL to be registered pursuant to any Act of Parliament, made or to be made, for the public registering of deeds and conveyances in England or Ireland :

Where the instrument registered is chargeable with any duty not amounting to 2*s*. 6*d*. { The same duty as the registered instrument.

In any other case 0 2 6

MORTGAGE, BOND, DEBENTURE, COVENANT, WARRANT OF ATTORNEY to confess and enter up judgment, and FOREIGN SECURITY of any kind.

- (1.) Being the only or principal or primary security for—

The payment or repayment of money not exceeding 25 <i>l</i>	0	0	8
Exceeding 25 <i>l</i> . and not exceeding 50 <i>l</i>	0	1	3
" 50 <i>l</i> . " 100 <i>l</i>	0	2	6
" 100 <i>l</i> . " 150 <i>l</i>	0	3	9
" 150 <i>l</i> . " 200 <i>l</i>	0	5	0
" 200 <i>l</i> . " 250 <i>l</i>	0	6	3
" 250 <i>l</i> . " 300 <i>l</i>	0	7	6
" 300 <i>l</i>			

For every 100*l*., and also for any fractional part of 100*l*., of such amount 0 2 6

- (2.) Being a collateral, or auxiliary, or additional, or substituted, security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped :

For every 100*l*., and also for any fractional part of 100*l*., of the amount secured 0 0 6

- (3.) Transfer, Assignment, Disposition, or Assignment of any mortgage, bond, debenture, covenant, or

foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred, assigned, or disposed 0 0 6

And also where any further money is added to the money already secured } The same duty as a principal security for such further money.

- (4.) Reconveyance, Release, Discharge, Surrender, Re-surrender, Warrant to Vacate or Renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:

For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount or value of the money at any time secured 0 0 6

And see sections 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115.

MUTUAL DISPOSITION or Conveyance, in Scotland. See *Exchange or Excambion*.

ORDER for the payment of money. See *Bill of Exchange* and section 48.

PARTITION or DIVISION—Instruments effecting.

In the case specified in section 94, see that section.

In any other case 0 10 0

POWER OF ATTORNEY. See *Letter of Attorney*.

PRECEPT OF CLARE CONSTAT to give seisin of lands or other heritable subjects in Scotland 0 5 0

PROCURATION, deed, or other instrument of 0 10 0

PROMISSORY NOTE. See *Bill of Exchange*, and section 49.

PROXY. See *Letter or Power of Attorney*.

RECEIPT given for, or upon the payment of, money amounting to 2*l.* or upwards 0 0 1

Exemptions.

- (1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for, and expressed to be received of the person to whom the same is to be accounted for.
- (2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.

- (7.) Receipt given for the consideration-money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in stock of the East India Company, or in the stocks and funds of the Secretary of State in Council of India, or of the governor and company of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively. £ s. d.
- (8.) Receipt given for any principal money or interest due on an exchequer bill.
- (9.) Receipt written upon a bill of exchange or promissory note duly stamped.
- (11.) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.

And see sections 120, 121, 122, and 123.

RECONVEYANCE, RELEASE, or RENUNCIATION of any security. See *Mortgage, &c.*

RELEASE or RENUNCIATION of any property, or of any right or interest in any property—

Upon a sale. See *Conveyance on Sale.*

By way of security. See *Mortgage, &c.*

In any other case 0 10 0

RENUNCIATION. See *Reconveyance and Release.*

RESIGNATION. Principal or original instrument of resignation, or service of cognition of heirs, or charter or seisin of any houses, lands or other heritable subjects in Scotland holding burgage, or of burgage tenure 0 5 0

And instrument of resignation of any lands or other heritable subjects in Scotland not of burgage tenure 0 5 0

REVOCATION of any use or trust of any property by deed or by any writing, not being a will 0 10 0

SCHEDULE, INVENTORY, or document of any kind whatsoever, referred to in or by, and intended to be used or given in evidence as part of, or as material to, any other instrument charged with any duty, but which is separate and distinct from, and not indorsed on or annexed to, such other instrument :

Where such other instrument is chargeable with any duty not exceeding 10s. } The same duty as such other instrument.

In any other case 0 10 0

Exemptions.

£ s. d.

(1.) Printed proposals published by any corporation or company respecting insurances, and referred to in or by any policy of insurance issued by such corporation or company.

(2.) Any public map, plan, survey, apportionment, allotment, award, and other parochial or public document, and writing, made under or in pursuance of any Act of Parliament, and deposited or kept for reference in any registry, or in any public office, or with the public books, papers, or writings of any parish.

SEISIN. Instrument of seisin given upon any charter, precept of *clare constat*, or precept from chancery, or upon any wadset, heritable bond, disposition, apprising, adjudication or otherwise of any lands or heritable subjects in Scotland not of burgage tenure

0 5 0

And any NOTARIAL INSTRUMENT to be expedited and recorded in any register of sasines

0 5 0

SURRENDER—

Of copyholds. See *Copyhold*.

Of any other kind whatsoever not chargeable with duty as a conveyance on sale or mortgage

0 10 0

TACK of lands, &c. in Scotland. See *Lease or Tack*.

TACK IN SECURITY. See *Mortgage, &c*.

TRANSFER. See *Conveyance or Transfer*.

TRANSFER. Any request or authority to the purser or other officer of any mining company, conducted on the cost book system, to enter or register any transfer of any share, or part of a share, in any mine, or any notice to such purser or officer of any such transfer

0 0 6

And see section 128.

VALUATION. See *Appraisalment*.

WADSET. See *Mortgage, &c*.

WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or retransfer of stock.

See *Mortgage, &c*.

WARRANT OF ATTORNEY of any other kind 0 10 0

WARRANT FOR GOODS 0 0 3

Exemptions.

(1.) Any document or writing given by an inland

carrier acknowledging the receipt of goods £ s. d.
conveyed by such carrier.

- (2.) A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares or merchandise.

And see sections 88, 89, and 92.

WRIT—

- | | | |
|---|---|-------|
| (1.) Of Acknowledgment under "The Registration of Leases (Scotland) Act" | } | 0 5 0 |
| (2.) Of Acknowledgment by any person infeft of lands in Scotland in favour of the heir or disponee of a creditor fully vested in right of an heritable security constituted by infestment | | |
| (3.) Of Resignation, Confirmation, <i>Clare Constat</i> , or Investiture under "The Titles to Land Consolidation (Scotland) Act, 1868" | | |

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.

- (1.) Transfers of shares in the Government or Parliamentary stocks or funds.
- (2.) Instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share in or property of or in any ship or vessel.
- (3.) Instruments of apprenticeship, bonds, contracts and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.
- (4.) Testaments, testamentary instruments, and dispositions *mortis causæ* in Scotland.
Etc., etc.

SPECIFIC DELIVERY OF GOODS SOLD.

19 & 20 VICT. c. 97.

An Act to amend the laws of England and Ireland affecting trade and commerce. [29 July, 1856.]

Specific
delivery of
goods sold.

2. In all actions and suits in any of the superior courts of common law at Westminster or Dublin, or in any court of record in England,

Wales or Ireland, for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff, and by leave of the judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered, what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages (if any) the plaintiff would have sustained, if the goods should be delivered under execution, as hereinafter mentioned, and what damages, if not so delivered; and thereupon, if judgment shall be given for the plaintiff, the court, or any judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery, on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid, of the said goods, without giving the defendant the option of retaining the same upon paying the damages assessed; and such writ of execution may be for the delivery of such goods; and if such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the court, or such judge or baron as aforesaid, shall otherwise order, the sheriff, or other officer of such court of record, shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, or within the jurisdiction of such other court of record, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages, or a due proportion thereof; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs and interest in such action or suit.

INTEREST.

3 & 4 WILL. IV., c. 42.

An Act for the further amendment of the law and the better advancement of justice.

[14th August, 1833.]

28. That upon all debts or sums certain payable at a certain time, or otherwise, the jury, on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or, if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of

Jury empowered to allow interest upon debts.

In certain actions the jury may give damages in the nature of interest.

such demand until the term of payment ; provided that interest shall be payable in all cases in which it is now payable by law.

29. That the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this act.

COUNTY COURTS.

9 & 10 VICT. c. 95.

An Act for the more easy recovery of small debts and demands in England.

[28 August, 1846.]

Regulating the sale of goods taken in execution.

106. That no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken ; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff to be put in possession by the bailiff ; and it shall be lawful for the high bailiff, from time to time, as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers (a) for the purpose of selling or valuing any goods, chattels or effects taken in execution under this act, as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression ; and the judge or high bailiff may dismiss any person, broker or appraiser so appointed ; and no goods taken in execution under this act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed ; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

(a) See 12 & 13 Vict. c. 101, s. 10.

19 & 20 VICT. c. 108.

An Act to amend the acts relating to the County Courts.

[29 July, 1856.]

72. Where any claim shall be made under section one hundred and eighteen of the act of the ninth and tenth years of the reign of Her present Majesty, chapter ninety-five, to or in respect of any goods taken in execution under the process of a county court, the claimant may deposit with the bailiff, either the amount of the value of the goods claimed, such value to be fixed by appraisement in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained; and in default of the claimant so doing the bailiff shall sell such goods, as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the judge.

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.

75. Section one of the act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of a county court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing, signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first the costs of and incident to the sale, next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and, lastly, the amount for which the warrant issued; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued; and in either event the overplus of the sale, if any, and the residue of the goods, shall be returned to the defendant; and the poundage of the high bailiff

When goods seized under process of County Court, landlord may claim certain rent in arrear (b).

(b) This does not authorize the bailiff to distrain and sell the goods of a stranger upon the premises: *Beard v. Knight*, 8 E. & B. 865; 27 L. J. Q. B. 369; *Wilcoxon v. Searby*, 5 H. & N. 202; 29 L. J. Ex. 154.

and broker for keeping possession, appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the county court, and no other fees shall be demanded or taken in respect thereof.

Fees specified in schedule (c) to be taken, and table of fees to be exhibited in court and registrar's office.

78. The fees payable on the proceedings in the county courts mentioned in schedule C to this act shall be those therein specified; and such fees shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising or selling goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken, before such proceeding is taken; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced by such means as might be employed to recover any debt adjudged by the court to be paid; and a table of all fees shall be posted in some conspicuous place in every court-house and in every registrar's office.

79. [Treasury to regulate fees to be taken in county courts.]

DISTRESS FOR RENT, &c.

57 GEO. III. c. 93.

An Act to regulate the Costs of Distresses levied for Payment of Small Rents.

[10th July, 1817.]

Person making distress for rent, where sum due shall not exceed £20, to take no other charges than those in schedule.

1. Whereas divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others, and it is expedient to check such practices: Be it enacted that from and after the passing of this act no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of twenty pounds for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed and appropriated to each act which shall have been done in the course of such distress (d); and no person or persons whatsoever shall make any charge whatsoever for any act, matter or thing mentioned in the said schedule, unless such act shall have been really done.

(c) See *ante*, p. 251.

(d) See *ante*, p. 283.

COSTS OF DISTRESSES EXTENSION ACT.

7 & 8 GEO. IV., c. 17.

An Act to extend the provisions of an act made in the fifty-seventh year of King George the Third, for regulating the Costs of certain Distresses.

[28th May, 1827.]

WHEREAS by an act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled *An Act to regulate the costs of distresses levied for payment of small rents*, certain regulations are made with respect to the costs and charges of levying and disposing of such distresses, where the sum demanded and due shall not exceed twenty pounds; And whereas it is expedient that the said act should be amended, by extending the same to distresses for other causes: Be it therefore enacted, &c., That, from and after the passing of this act, all the rules, regulations, clauses, provisions, penalties, matters and things in the said act contained shall extend and be construed to extend, and shall be applied and put in execution, so far as the same are applicable and capable of being put in execution, with respect to any distress or levy which shall be made for any land-tax, assessed taxes, poor's-rates, church-rates, tithes, highways-rates, sewer-rates or any other rates, taxes, impositions or assessments whatever, in all cases where the sum demanded and due for or in respect of such taxes, rates, tithes, assessments or impositions shall not exceed the sum of twenty pounds, and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds; and that such costs and charges, and no other, shall be taken and payable as the costs and charges of the levy and disposition of such distresses; and that all such proceedings shall and may be had and taken against any and every person transgressing the regulations of the said act in the levying or distraining for any such taxes, rates, impositions or assessments, and all such persons shall be liable to and shall incur such and the like penalties, as by the said act are directed, required and imposed with respect to persons making any distress for rent contrary to the directions of the said act; and that in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this act, such order shall be expressed to be made upon a complaint for the breach of the said recited act as amended by this act; and that the said recited act and this act shall be taken and construed together as one act, to all intents and purposes whatsoever.

Provisions
of recited
Act extended to
distresses
for taxes,
rates,
tithes, &c.

APPENDIX B.

RULES FOR VALUING PROPERTY.

(a) FREEHOLD ESTATES.

THE value of a freehold estate, considered as an investment, is the same as the value of a perpetual annuity equal in amount to the net annual value of the estate. The value of a perpetual annuity is calculated by the rate of interest at which money is improvable; and the annual value of an estate is dependent, in a great measure, upon the rent which it produces. If interest and rent were not subject to fluctuation or deductions, we should have here a ready mode of comparison for estimating the value of a freehold estate. For instance, if the established rate of interest were 3 *per cent.*, and it were required to find the number of years' purchase which a perpetual annuity at that rate of interest is worth, we have only to divide 100 by the percentage (in the case supposed, 3), thus, $100 \div 3 = 33\cdot333$; the result being, that a perpetual annuity, at 3 *per cent.*, is worth 33 $\frac{1}{3}$ years' purchase. Then, if we multiply the given annuity (say £100) by the number of years' purchase, we have $\text{£}100 \times 33\frac{1}{3} = \text{£}3333$, the value of the perpetual annuity required. The same operation shows the value of the fee simple of an estate, the net rental of which is £100 *per annum*, and the purchase-money of which is required to produce 3 *per cent.*, or 33 $\frac{1}{3}$ years' purchase.

Net rental	.	.	£100
Year's purchase	.	.	33·33

Value of the freehold $3333\cdot33 = \text{£}3333 \quad 6 \quad 8$

By a similar process, the value might be found at any other rate of interest or number of years' purchase. But rent and interest are both uncertain and liable to deductions, and hence arises the chief difficulty in arriving at a standard of comparison. Mr. Kent, in his "Hints to Gentlemen of Landed Property," p. 297, gives the following general rule, founded on the current interest of government securities:—"When the funds stand steady at 4 *per cent.*, the standard of mortgages may be considered at 4 $\frac{1}{2}$ *per cent.*, and the net return of freehold land ought then to be calculated at 3 *per cent.*" This is a simple rule for a rough or general estimate of value, and may easily be retained in the memory.

But, in order to ascertain the net annual value of an estate, it is necessary to consider a variety of circumstances, as well as the existing rent. On the one hand, there may be real or supposed advantages of situation, or some local or personal recommendation, to be taken into the calculation; and, on the other, there may be quit-rents, tithe commutations, and other annual charges, to be deducted, in addition to the ordinary parochial rates and taxes; and these again may be comparatively light or heavy. Then the property may be let too high, by reason of fines or premiums, or too low, by reason of its being held for a term. Or in the particular locality freehold property in the market may be plentiful or otherwise. These and other circumstances cause the value of property to fluctuate considerably; but, under ordinary circumstances, the price of a freehold estate usually ranges between twenty-eight and thirty-three years' purchase. (King's Auctions, vii. See *post* (d)).

For a railway, or other undertaking under a compulsory power, a different standard of value is adopted. It appears, from a report made by a select committee of the House of Lords that it is (or was) the practice, in valuing freehold property for such a purpose, to add to the marketable value thereof, usually taken at about thirty-three years on the net rental, a per-centage on the ground of the sale being compulsory, and an additional per-centage for severance. The committee considered that as much as 50 *per cent.* upon the marketable value ought to be given in compensation for compulsion only, the severance and damage being distinct considerations. The compensation for severance depends upon the amount of damage done, varying, according to circumstances, from five to many hundreds *per cent.* upon the value.

If there be any incumbrance on the estate, a proper deduction must be made from the rent on the gross estimated value. The amount to be deducted on account of a life interest, lease or annual payment may be estimated by the rules for valuing leasehold estates, annuities and reversions, *post*.

Valuations under the Tithe Commutation Act (6 & 7 W. IV., c. 71) are regulated by averages for the seven years preceding Christmas 1835 (s. 37), the rent charges being reckoned of the value of such number of bushels as the same would have purchased at the prices ascertained by the corn returns, if one-third had been invested in wheat, one-third in barley, and one-third in oats (s. 76).

(b) ESTATES PART FREEHOLD AND PART COPYHOLD. (a)

Copyhold being equally valuable with freehold to an ordinary occupier, although the difference in value to a purchaser may in ordinary cases be taken at five years' purchase, the following rule will give the desired result:—

(a) From Rouse's "Practical Man."

The number of years' purchase which the land is worth as an absolute freehold interest being determined, and the annual value to the occupier, deduct five years' value of the freehold land, and divide the remainder between the freehold and copyhold, in proportion to the annual value, without regarding tenure, and the result, as to the copyhold, will give the value; and, as to the freehold, will, with the addition of the retained five years' value, give its value.

Should there be a house, either freehold or copyhold, which it should be considered ought to pay a higher rate of interest than the land, the value of such house should be first separately ascertained, and the remainder only considered as the value to be calculated.

Example.—An estate of 250 acres and house. Land worth £1 per acre net, and house worth £30 a year—50 acres freehold—remainder and house copyhold: freehold land estimated at 30 years' purchase, and copyhold at 25 years.—Required: value of estate, and, if sum given, apportionment.

1.	Estimated value of house	=	£500
	50 acres freehold at 30 years	=	1500
	200 acres copyhold at 25 years	=	5000

Value £7000

2. Value, or sum asked, given, and apportionment required :—

		Copyhold.	Freehold.
Purchase-money	£7000		
House	500	= 500	
	6500		
5 years' value of freehold	250	=	= 250
	56250		
½ Freehold	1250	=	= 1250
½ Copyhold	5000	= 5000	
	6250	5500	Freehold 1500
		Copyhold	5500
			£7000

(c) COPYHOLD ESTATES.

Mr. Kent states that, if the fee simple of land be calculated at 3 *per cent.* interest, copyholds, upon a fair calculation, should be reckoned at 3½ *per cent.*, and copyholds with a fine at the will of the lord, at 4 *per cent.*

[In the 5th edition of this book Mr. Rolla Rouse expressed his dissent from the foregoing opinion thus :

“The distinction taken as to copyholds subject to fine at will of the lord (presumed to mean the ordinary fines arbitrary on death or alienation) would imply that the other copyholds were only subject to fixed fines ; and, if so, the value of those fines in perpetuity must be calculated according to their real amount in each case, such amounts greatly varying on different manors, and no general rule of allowing an equal difference in value as compared with freeholds would be just.

“Mr. Kent’s general rule makes the first class of copyholds, or those not subject to fines arbitrary, = $28\frac{1}{2}$ years’ purchase ; freehold being worth $33\frac{1}{2}$; or a difference of $4\frac{1}{2}$ years’ purchase. The copyhold subject to fines arbitrary he takes at 25 years’ purchase, or $8\frac{1}{2}$ years’ purchase less than freehold.

“A careful estimate of the value of the lord’s rights in fines in perpetuity will show that a purchaser should estimate 5 years’ purchase as a fair difference in the value where copyhold is subject to fines arbitrary on death or alienation, adding 28 years’ purchase on the quit rents.

“Where the fines are certain, the real pecuniary value of the lord’s interest in the fines will in general be $2\frac{1}{2}$ fines, to which will be added 28 years’ purchase on the value of the quit rents.

“The general estimate will not, in the case of fines arbitrary, apply to land suitable for building purposes, or capable of great improvement, nor will it apply to minerals.”]

(d) LAND :

With hints for Surveying and Measuring.

IN valuing freehold land, it will be necessary not only to consider the circumstances already referred to, but also the nature of its soil, and the state of its cultivation ; and whether it is capable, by a different mode of management, of any improvement, and, if so, to what extent. When either the rent or annual value depends in any degree upon the quantity, it should be ascertained whether the quantity mentioned in the plans or title-deeds is correct, and, if any doubt is left on the subject, an actual admeasurement should be made. Sometimes the correct quantity may be found upon the parochial maps made under 6 & 7 W. IV., c. 96, or the schedules made for the commutation of tithes under 6 & 7 W. IV., c. 71. The tithe surveys are now generally taken as fairly giving the quantities. When no such aid is available, the following hints for obtaining a rough estimate of the quantity of different shaped fields or inclosures may be found useful :—

For a Square or Rectangle.—Multiply the length by the breadth ; the product is the content in the denomination in which the calcula-

tion is made, from which it may be reduced to acres by the proper divisor, or reference to the proper tables.

To obtain the dimensions, a chain is used, divided into one hundred links, the chain itself being twenty-two yards, or one-tenth of an acre, in length; so that, when the dimensions are taken in links, and multiplied into each other, the product may be used as decimals, by cutting off from the right hand five figures. Thus: $800 \text{ links} \times 200 = 1.60000$, or 1 acre and 6-10ths, which $\times 4$ and 40 will give 2 roods and 16 perches.

For shorter distances an offset-staff is used, graduated to ten links.

If a chain cannot be obtained, an approximation may be formed by stepping along the field, reckoning each step a yard.

If the calculation be made in yards, divide the product by 4840, the number of square yards in an acre; or multiply by the proper decimal in table of decimals; or refer to Table 14 (*d*), for reducing square yards to acres. Or a measure of any length may be made upon a rod, or piece of string, by marking thereon from a measuring tape or carpenter's rule any convenient number of feet and inches.

For a Rhombus or Rhomboid (a figure having at least two of the sides equal and parallel, but not right angles).—The rule is the same as for a square, the breadth being found by measuring across the field at a right angle, instead of going along the sides, as is done for the length.

For a Trapezoid (two of the sides parallel, but not equal).—Multiply half the sum of the two parallel sides by the perpendicular distance between them.

For a Trapezium (four straight sides of different lengths).—Obtain a diagonal, by measuring from corner to corner the longest way. Take a perpendicular, or offset, from the diagonal to each of the other corners. Multiply the sum of the length of the two perpendiculars by the length of the diagonal, and divide by 2 for the content.

To find the perpendiculars, the usual instrument is a cross staff, consisting of a small board, grooved at right angles, and let into the upper part of a staff or rod. For want of such an instrument an approximation may be obtained by looking towards the point to which the perpendicular is to be measured, having first ascertained that your hands, when spread out, point to the two ends of the diagonal.

For a Triangle.—Multiply half the length by the perpendicular breadth.

For a Circle.—Multiply the square of the diameter by .7854; or multiply the square of the circumference by .079577; or measure the diameter or circumference, and refer to table of circular areas (by diameter) for the area.

Or: (a general and simple rule, and with a very close approximation to the exact area) take $\frac{11}{14}$ of the square of the diameter. For example: suppose diameter 20 rods, the square will be 400, which $\times 11$ and $\div 14$ will give 314.28 square rods as the area, the true quantity being .12, or about $\frac{1}{8}$ of a rod less.

For a Semicircle, Quadrant, Octant, or any other even Section of a Circle.—Find the area of the whole circle, and take one-half, one quarter, or one-eighth, as the case may be.

For an Oval.—Multiply the longer axis by the shorter, and by .7854; or take $\frac{11}{14}$ of the longer axis \times by the shorter. For example: the longer 30 rods, and the shorter 20. Here, $30 \times 20 \times 11 \div 14 = 471\frac{1}{4}$ rods, the area.

For an irregular Polygon.—If the boundaries will admit of the division of the figure into right-angled parallelograms, or right-angled triangles, as A, B, C, D, E, F, G, H, I, take a base line across the field or estate, and erect perpendiculars from it to the different angles. The content of each figure must then be calculated separately, as above, and the sum will be the content of the field. When there are several totals, it is convenient to add them together in links or yards, and reduce the whole at once into acres.



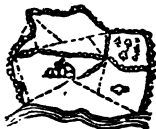
2. In the same manner a field may frequently be divided into trapeziums, as 1, 2, 3; or triangles; and each of these figures being measured separately, and added together, will give the content of the field. This field is, in fact, divided into triangles, a trapezium being a double triangle, with a common base.



3. If there be slight curves in the boundaries, they must be measured as triangles, or parallelograms, as above; or, if they are very slight, an average or even breadth is sometimes taken by means of perpendicular lines from the base, as at c, and this average is multiplied by the length, which produces an approximation to the area, and is added to the contents of the other figures for the contents of the field.



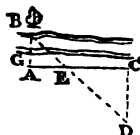
4. If water, wood, corn-fields, &c., intervene, and prevent the actual passage of the surveyor across the fields, set up staves or poles at the corners, and measure the body of the estate according to the regular figure it approaches most nearly. Find the area of the impediment or irregularity applying to any particular figure separately; and to the area of the body of the field add the area of so much of the impediment or irregularity as bends beyond the line of the regular figure, and subtract therefrom any part of it which protrudes inwards.



To find the Breadth of a River without crossing it.—From a point, A, near the brink, observe an object, B, on the opposite bank; place a pole at C, by means of the cross-staff, so that the angle B A C may be a right angle; place another pole at D, so that C D may be at right angles to A C. Standing at D, make an assistant plant a pole at E, in the line A C, and in the direction D B; then measure

the distances, and say, as C E (suppose 180 feet) : E A 120 :: D C 140 : A B 98.33 - A G (say 12 feet) = 81.33, breadth of the river. (Ritchie's "Geometry," p. 99.)

But no cross-staff is required, and with simply four small sticks the distance can be easily ascertained. Where, as may often be the case, it would be difficult to make the triangle E C D so large as the other triangle, any portion of the latter may be taken; for example, a fifth. In such case the measured perpendicular which marks the distance, will be one-fifth of the actual distance.



The object in using the cross-staff is to make the line C D at a right angle to A C; but very little practice will make it easy to get such angle correctly; the accuracy can be tested by marking off with a measuring tape the proportions of 3, 4 and 5 as the sides of the triangle, as those proportions mark a right angle.

Various other rules for measurements to and between inaccessible objects might readily be given, but for ordinary surveying work, where instruments and trigonometrical tables are easy of access, they would be of but little practical utility. Further rules are therefore not added.

(e) HOUSES AND BUILDINGS :

With Observations on Artificers' Works.

The value of a new freehold house for residence is the price of the land on which it is built, with the cost of the materials and labour employed in its erection. For investment many circumstances have to be considered; as, the length of time the house has been erected; the kind of materials that have been used in the erection; the state of repair in which it is at the time; the rent if let, or the value if in hand, to be ascertained by the rent of similar houses in the neighbourhood; the situation for the particular purpose for which it is likely to be wanted, and the state of lighting, drainage, &c. Houses, of course, ought to bear a higher rate of interest than land, as they are liable to dilapidation or destruction; but, where the estate is large, the buildings are frequently thrown into one general calculation. In estimating the value of a house or building, it is frequently necessary to consider the cost of the labour that has been employed upon it, and of the materials used. A few brief observations on the mode of ascertaining the value of such labour and materials are therefore subjoined.

Carpenters' Work.—Shelves, &c., are measured and charged by the square foot, containing 144 square inches; wainscoting by the square yard, containing 9 square feet; flooring, roofing, partitions, &c., by the square, of 100 square feet. Joists, &c., are measured by

solid or cubical measure, comprising length, breadth, and thickness ; 1728 cubic inches being 1 foot, and 27 feet a yard. Flat surfaces may be measured by the rules in Division (d), &c.; the proper divisors being used for reducing the contents into feet, or yards, or squares, instead of acres. The rules for measuring solid articles are inserted in sect. i. *post*.

In measuring roofs for covering, holes of chimney shafts and skylights are deducted, but not in measuring for work in building, on account of extra trouble and waste.

Doors, window-shutters, &c., when both sides are planed, are considered work and half ; and, if panelled on both sides, double work. Windows are usually made at a given price each. The measure of staircases is taken by passing the tape over the riser and tread ; the length being multiplied by the width for the superficial content.

To find the height of a roof, take the square of half the breadth from the slant height, and extract the square root of the remainder.

To find the length of a rafter, add the square of the height of the roof to the square of half the breadth.

Time is often saved by drawing the base and perpendicular according to scale, and measuring off the roof from the drawing thus made.

For the usual prices charged for carpenters' work, see "Skyring's Builders' Prices;" and for other particulars respecting timber, *post* (j).

Bricklayers' Work.—Walls are usually charged by the rod. For calculating at that rate, they are reduced unto $1\frac{1}{2}$ brick thick, 272 superficial feet of which make a rod. Thus, if a wall, when reduced to $1\frac{1}{2}$ brick thick, measures 140 feet, at £4 per rod, it would be charged £2 1s. 2d. (See "Skyring's Builders' Prices," 75.)

A rod of brick work, in fact, usually contains 4500 bricks; or 11 yards and 9 feet cube; or 306 feet cube; or 408 feet superficial of one brick thick; or 272 feet superficial of $1\frac{1}{2}$ brick thick; but sometimes it is reckoned 21 feet long, and 3 feet high, and the price is regulated by the thickness, no regard being paid to it in measuring. The divisor for reducing it to a rod in this case is 63. The dimensions are sometimes taken by measuring half round the outside, and half round the inside, for the whole length of the wall; and the wall is reduced to a standard thickness by multiplying the number of superficial feet in the wall by the number of half bricks in thickness, and taking one-third of the product for the content in feet, which is to be reduced into rods as above, or into square yards by the proper measure.

The daylight of all vacuities is deducted. In some places chimneys are allowed double for extra workmanship. Ovens, coppers and all solid walls are measured by the foot cube. Digging is charged by the cubic yard (of 27 feet).

The brickwork contained in a wall may be found by multiplying 3 times the diameter (allowing the thickness on one side) by the depth, and reducing the content to $1\frac{1}{2}$ brick thick, as before. The quantity which a well will hold is found by measuring the inner

diameter in inches and the depth in inches, which, multiplied together, will give the contents in inches, and the table of inches and gallons will give the contents in gallons. See Table 19 (*a*) *post*.

Masons' Work.—Marbles, stone pillars, &c., when above two inches thick, are usually measured and charged by the cubic foot. Pavements, slabs, chimney pieces, &c. are measured by the square yard, the tape being passed along all that appears without the wall. External workmanship is also usually charged by the foot or yard superficial.

Metal, for roads, is generally undertaken to be broken at so much per 16 solid or cubic feet, called for this purpose a ton. The content of a heap of such materials may be found, in feet, by the rule for measuring timber (*post*), and then dividing by 16 for tons.

Plasterers' Work.—Plasterers' work is measured and charged by the square yard, consisting of 9 square feet. In arches, the girth round, multiplied by the length, will give the content.

Slaters' Work.—Tiling and slating are measured and charged by squares of 100 feet; the length of the roof being multiplied by the slant height, and the product by 2, if both sides are alike; and an addition being made for overlapping, and a deduction for sky-lights and chimney-shafts, when they are large.

To measure circular roofs, multiply half the circumference round the eaves by the slant height from the eaves to the top. This rule is applicable to thatchers' work.

The value of roofing slates depends partly on their size, and partly on their weight. 1000 duchess's slates, long tale, will measure 10 squares; 1000 countess's, $7\frac{1}{2}$ squares; 1000 lady's, $4\frac{1}{2}$; 1 ton of rags, from $1\frac{1}{4}$ to 2 squares; 1 ditto queen's, or imperials, from $2\frac{1}{4}$ to $2\frac{1}{2}$; and one ditto Westmoreland, 2 squares.

Glaziers' Work.—Glass is measured by superficial measure, circular windows being usually taken at the extreme dimensions, as if they were square.

Plumbers' Work.—The value and weight of lead regulates the price of plumbers' work. Sheet lead, used in roofing, weighs from 6 to 12 lb. per square foot. If sheet lead be $\frac{1}{16}$ of an inch thick, a square foot will weigh 5·899 lb.; $\frac{1}{8}$, 6·554 lb.; $\frac{1}{4}$, 7·373 lb.; $\frac{1}{2}$, 8·427 lb.; $\frac{3}{4}$, 9·831 lb.; 1, 11·797 lb.

If the bore of a leaden pipe be $\frac{1}{2}$ of an inch, the weight of a yard will be about 10 lb.; 1 inch, 12 lb.; $1\frac{1}{4}$ inch, 16 lb.; $1\frac{1}{2}$ inch, 18 lb.; $1\frac{3}{4}$ inch, 21 lb.; 2 inches, 24 lb.

Painters' Work.—Wainscoting, stuccoed walls, doors, and window-shutters are usually charged by the square yard, and every part on which the colour is laid is measured. Sash frames are charged by the dozen, and other articles at a fixed price.

Smiths' and Iron Work.—Cast iron averages 40 lb. to the foot superficial 1 inch thick. Bar iron (square) weighs (per foot) as follows:— $\frac{1}{2}$ inch, $13\frac{1}{2}$ oz.; $\frac{3}{4}$ inch, 1 lb. 5 oz.; $\frac{1}{2}$ inch, 1 lb. 14 oz.; $\frac{3}{4}$ inch, 2 lb. 9 oz.; 1 inch, 3 lb. 6 oz.; $1\frac{1}{4}$ inch, 4 lb. 4 oz.; $1\frac{1}{2}$ inch, 5 lb. 4 oz.; $1\frac{3}{4}$ inch, 7 lb. 4 oz. Bar iron (round) weighs as follows:—

$\frac{1}{2}$ inch, 10 $\frac{1}{2}$ oz.; $\frac{3}{4}$ inch, 1 lb.; $\frac{1}{2}$ inch, 1 lb. 8 oz.; $\frac{3}{4}$ inch, 2 lb.; 1 inch, 2 lb. 10 oz.; 1 $\frac{1}{2}$ inch, 3 lb. 5 oz.; 1 $\frac{1}{2}$ inch, 4 lb. 1 oz.; 1 $\frac{1}{2}$ inch 5 lb. 14 oz.

(f) LEASEHOLD ESTATES.

Leasehold for Years.

The value of a leasehold estate may be found upon the same principle as the value of annuities; with respect to which, and the basis on which the tables in relation thereto are calculated, see (g) "Annuities," *infra*. If the lease is for a given term, the true rack-rent, or annual value, must be found, and the incumbrances, if any, deducted. Then fix upon the rate of interest at which the purchase-money is to be improved, rather exceeding, especially for houses and buildings, the current interest for money, and find the number of years' purchase which a lease or annuity is worth at that rate for the given term by Table 7 (which, like all other tables for obtaining the value of annuities, &c., is calculated at compound interest), and multiply that number by the net rent for the value of the lease.

Thus, if it is desired to purchase a lease of fourteen years, to make 7 *per cent.* interest, and get back the principal. According to Table 7, *post*, this would be worth 8.0212 years' purchase, which, being multiplied by the net rent, would give the value.

Thus, suppose that the rack-rent was £120 a year, and the net rent after deductions, £100 a year, the value would be £802.12 or £802 2s. 5d. (See Table 12).

To find the annual rent corresponding to any given sum paid for a lease: divide the sum by the number of years' purchase in the table against the term of the lease, and under the rate of interest intended to be made of the money. For example, if £500 be asked for a lease of fourteen years, to pay the purchaser 7 *per cent.*, divide £500 by 8.0212, which will give 62.333, or £62 6s. 8d., as the net rental which should be made.

Leasehold for Life.

The value of a lease, when held on a life, is found by reducing the rental to a net amount, and ascertaining the value of a life annuity equal to such net amount, according to the rate of interest which is proposed to be made of the money. This value may be found by Table 9.

(g) ANNUITIES.

The present value of a perpetual annuity is such a sum of money as will yield an interest or profit equal to the annuity, and payable at the same periods. The value (*i.e.* the number of years' purchase)

of a perpetuity is ascertained by dividing 100 by the required percentage; thus $100 \div 5 = 20$; $100 \div 4 = 25$; $100 \div 3 = 33\cdot33$ (See Table 7); that is to say, a perpetual annuity at 5 *per cent.*, 20 years' purchase; at 4 *per cent.*, twenty-five years' purchase; at 3 *per cent.*, 33·33 years' purchase, &c. We thus see the nature of interest, or annual profit of money.

Interest.—The simple interest of any sum for a year is the proportion which such sum bears to the perpetuity; thus, the interest of £150 at 5 *per cent.* is as 20 : 1 :: 150 : £7 10s.; or, in other words, $150 \div 20 = £7\ 10s.$ An easy way of calculating interest for any number of days is the following:—Find the number of days from one month to another by Table 2, adding or subtracting the required number of days to make the days in the month equal. If both days are inclusive, add one day. If it be a leap-year, and February be included, add one day. Multiply the days by the principal, and refer to the interest Table, No. 5, for the interest corresponding with the product. Example:—£300, for seven days, at 3 *per cent.* Then, $300 \times 7 = 2100$. By the Table $2000 = 3s.$ $3\frac{1}{2}d.$ and $100 = 1\frac{1}{2}d. = 3s. 5\frac{1}{2}d.$ interest.

Interest on several sums may be found by adding the products of the several principal sums and days, and looking in the Table for the interest on the total.

Compound interest requires a more tedious calculation; but, for ordinary purposes, the amount may be found by Table 6.

Annuities for Years certain.

The present value of an annuity for a given number of years is a sum which, if put out at interest, will, at the end of that period, give an amount equal to the sum of all the payments of the annuity and interest.

Annuity tables are based on the rate of interest being received as income for the specified term, and also such an additional yearly sum as will, if accumulated at compound interest, replace the capital at the end of the term.

The ordinary tables are founded on the erroneous assumption that, however high may be the rate to be realized by the purchaser, the replacement fund can be accumulated at the same rate. Practically, however, accumulations cannot be made at a higher rate than 4 *per cent.*, and it requires care to realize that rate permanently, and, consequently, where a higher rate is assumed, the capital will not be replaced at the end of the term.

Table 7 is prepared on the basis of giving the purchaser the named rate of interest he is to make for the term, and as much more income as, accumulated at 4 *per cent.*, will replace capital at the end of the term.

The matter is of such importance that two examples will be given, showing the inaccuracy of the old tables, and the accuracy of the Table 7.

Required the present value of an annuity or leasehold term, for

thirty years, giving a net annual income of £100, to pay the purchaser 7 *per cent.*, and replace the capital at end of the term.

Ex. 1. With the Old Tables.

According to those tables, the present value will be 12·409 years' purchase, or £1240 18s.

The purchase-money of 7 *per cent.* on this sum (multiplying by 7, and dividing by 100) will be £86·863 (by Table 12, £86 17s. 3d.), leaving the balance, or £13·137 *per annum*, for replacement of capital.

Could the balance be accumulated at 7 *per cent.*, the capital would be replaced, as at that rate, £1 *per annum* would, at the end of thirty years, amount to 94·4608, which, multiplied by 13·137, will give 1240·9.

But if, as is the case, the accumulation can only be made at 4 *per cent.*, £1 *per annum* will only amount to 56·0849 (see Table 6), and multiplied by 13·137, will only give £736·787 to replace capital, leaving a deficiency of no less than £504·213, or £504 2s. 3d.

Ex. 2. With Table 7.

The present value at 7 *per cent.* will be for thirty years 11·3856 years' purchase or (T. 12), £1138 11s. 2d.

The portion of income required to give the purchaser 7 *per cent.* will be $1138·56 \times 7 \div 100 = 79·6992$, leaving 20·3008 as the annual fund for the replacement of capital.

By Table 6, at 4 *per cent.*, £1 *per annum* for thirty years will amount to 56·0849, which, multiplied by 20·3008 = 1138·56, and replaces capital as required.

Life Annuities.

The present value of a life annuity depends upon the probable duration of the life by which it is limited; and the usual mode of calculating such probability is by reference to tables showing the average rate of mortality of different ages and in different countries, or rather to other tables founded upon them, by which, for ordinary purposes, the value may be found with sufficient accuracy.

In the present edition the government 4 *per cent.* values for single lives are given, and also tables on the government basis at 3 and 5 *per cent.*, prepared by Mr. Rolla Rouse.

To calculate the value of a single life, refer to Tables 9, 10, or 11, and find the number of years' purchase the life is worth, and multiply by the sum;—the tables being all based on the value of £1, or £1 a year.

For example, what is the value of an annuity of £100 on a male life aged 35, at 4 *per cent.*?

Table 9 gives a male life of 35 as worth 15·749 years' purchase, which on £100 a year would give the value as £1574 18s. (the decimal 9 of a £ being equal to 18s.).

The foregoing calculations are founded upon the assumption that the annuity is properly secured, and not subject to any incumbrances. Sometimes, however, life annuities are granted for money borrowed by persons possessing life estates, who, therefore, cannot give the lender a permanent security. In valuing an annuity of this kind, the estimated expense of insuring the grantor's life and other contingencies must be deducted from the tabular value.

(h) REVERSIONS.

The present value of a reversion is the sum which, if improved at interest at the same rate as that on which the calculation of value is made would, at the period when the reversion comes into possession, amount to its then actual value. Upon this principle tables have been calculated, the application of which is shown in the following rules. But "it is perfectly well known that reversions upon sale, even by auction, fetch on an average only two-thirds of the sum at which they are valued in the tables." (Sugd. 277, referring to *Gowland v. De Faria*, 17 Ves. jun. 20; and see Nicholson's Cyclop., tit. REVERSIONS.) The following rules for estimating the value of reversions under different circumstances are equally applicable to real estates, funded property, and money payments; but there are some cases in which a reversion in an estate may be more valuable than a like reversion in a given sum, as where the first year's rent is to be paid on the commencement of the reversion.

1. When a reversion is dependent upon a term certain, its value is the real value of the estate or sum, after deducting the discount for the term at compound interest. This is shown by Table 8, which gives the value of deferred payments for any number of terms certain. Thus, if a person is entitled to £500, or an estate of that value, at the end of ten years, what is its present value at *£5 per cent.*? The value of £1 to be received at the end of ten years is .6139, which, multiplied by 500, gives £306 19s. for the present value.

2. If the reversion be subject to an existing life interest, the value of such life interest may be found, the same as for an annuity, by Table 9, 10, or 11, and subtracted from its perpetuity, the remainder being the value of the reversion. Thus, suppose it is required to find the present value of A.'s interest in an estate, worth £100 a year, falling to him at the death of B., aged 35, interest at *£4 per cent.*, according to the Government Table. The value of the perpetuity of £100 a year, interest at *£4 per cent.*, is $25 \times 100 = £2500$; and the value of an annuity of £100 on a person aged 35, interest at *£4 per cent.*, is 15.749, and $\times 100 = £1574$ 18s., which, deducted from

£2500, leaves £925 2s., the present value required. Or it may be worked out thus :—

Perpetuity	25	years
Life, as per Table	15	749

$$9.251 \times 100 = £925 \text{ 2s.}$$

3. Should the reversion be contingent on a life, the value of the absolute reversion should be multiplied by the decimal of the perpetuity equal to the value of the life. Thus, if A. (a male), aged 30, be entitled to £1000, to be received on death of B. (a male), aged 60, provided A. be then living, the value will be found thus, assuming it to be at 5 *per cent.* :—

Perpetuity	20
Life of B., 60, Table 11	8.977

Absolute reversion 11.023 years' purchase.
This at £50 a year would be 551.15.

The life of A., 30 = 14.502 = .7251 of perpetuity, and 551.15 \times .7251 = £399 12s., the value required.

The absolute reversion shows the value of a policy of insurance payable on death; in such a case a deduction must be made of the value of the annual premium (calculated by the table as an annuity on the life insured), and for the delay in payment which is usual after the death of the insured. It must also be remembered that the offices never give the correct value, nor can it be obtained on a sale.

The annual premium which should be paid on the insurance of a sum payable at death would be the present value of the sum to be received, divided by the present value of £1 a year to be received during the life. Of course, however, more must be charged by the offices to allow for expenditure in management, and to give a profit; and this point is not overlooked by the offices.

4. If the reversion be an annuity for a given term, or for a life of a given age, after an existing life interest, the formula will be— as the perpetuity is to the value of the given term or life, so is the difference between the existing life and its perpetuity to the years' purchase of the reversion. Thus, if A. be entitled to an annuity certain for fourteen years, to commence at the death of B. (a male), aged 30. The value of B.'s life, by Table 11, at £5 *per cent.*, is 14.502, which, subtracted from 20, the perpetuity, leaves 5.498 for remainder. The value of an annuity certain for 14 years is 9.899. Therefore, as 20 : 9.899 :: 5.498 : 2.721 years' purchase, the present value of A.'s reversion.

2. If A. be entitled to an annuity on a male's life, aged 36, commencing 10 years hence: the 10 years' value at £5 *per cent.* is found by Table 9 to be 7.722, which, subtracted from the perpetuity (20), leaves 12.278 as the remainder. The value of an annuity on a

male life, aged 36, by Table 9, at £5 *per cent.* = 13·759. Therefore, as 20 : 13·759 : : 12·272 : 7·829 years' purchase, the present value of the reversionary annuity.

3. If A. has the right of the next presentation to a living which it is intended on his death to give to a person aged 30, the age of the present incumbent (B.) being 70, what is the value of A.'s reversion? The value of B.'s life, by Table 8, at 5 *per cent.*, is 6·355, which, subtracted from 20, the perpetuity, leaves 13·645 for the remainder. The value of the life of the intended incumbent, according to the same table, is 14·502. Therefore, as 20 : 14·502 : : 13·645 : 9·894 years' purchase, the value of A.'s reversion.

(i) TIMBER.

English Timber ; with hints for measuring.

The value of timber depends upon its quality, kind, situation, and the labour necessary for bringing it into a state of fitness for use. Of English timber, oak is generally considered the best for building purposes ; but sweet chestnut is more lasting, and was used in the roof of Westminster Hall, and in many old churches : fir for flooring, wainscoting, &c. Elm is much used by wheelwrights, &c. Many articles of household furniture are made of beech. Hand-spikes and oars are made of ash. The other kinds of timber grown in England are chestnut, walnut, poplar, &c.

The goodness of timber depends not only on the soil and situation, but also on the season wherein it is felled, and the time and mode of its subsequent seasoning. If the trees be sold when growing, a deduction from its current value must be made on account of the labour of felling, peeling, &c.

The quantity or solid contents of timber, &c., may be found by the following brief rules :—

For a Cube or other Rectangular Figure.—Multiply the length by the breadth, and the product by the depth. In other words, find the area of the base, and multiply by the perpendicular height.

Applying the former part of this rule to boards, tables, floors, or other flat surfaces in which thickness is of no consequence, the rule is the same as for measuring land : (*d*) *ante*. Thus, the length of a board, or its mean length, is 10 feet 6 inches ; breadth, 1 foot 3 inches ; or decimally = $10\cdot5 \times 1\cdot25 = 13\cdot125$ feet superficial.

Applying the rule to a cubical block of timber, &c., the dimensions of which are easily taken in inches and tenths by a rule or graduated tape, it may be worked thus : Length, 40 inches \times breadth, 40 \times depth, 40 = $64000 \div 1728 = 37$ cubic feet nearly. Instead of dividing by 1728, the number of cubical inches in a foot, the product 6400 may be multiplied by its square factor '000578, and the result will be the same. If the dimensions be taken in feet, the answer

will be in feet, and so of any other denomination. This and the subsequent computations will be greatly simplified by the aid of the decimal tables after Table 15.

2. For a square piece of timber, breadth, 6 inches \times depth, 3 inches \times length, 144 inches = $2592 \div 1728 = 1.5$, or one solid foot and a half.

Or the content may be found by the quarter girth (*infra*).

For a Cylinder (or round figure).—Multiply the square of the diameter by .7854, and the product by the height; or multiply the square of the circumference by .079577, and the product by the height. Example:—The mean circumference of a tree is 10 feet inches; length 24 feet. Then, decimally, $10.33 \times 10.33 \times .079577 \times 24 = 203.797$ feet. Or perhaps a better mode would be to reduce the 10 feet 4 inches to inches and obtain area from note at foot of Table 16.

But the common rule for measuring round timber is by what is called quarter girth; viz., take the mean circumference by means of a knotted whip-cord, or a measuring tape, square one-fourth of it, and multiply by the length for the content. This allows for squaring and waste; and according to this method, the tree of the last example would be computed at 159.13 cubic feet only, being a loss of about 3 feet in every 11 feet.

If all the dimensions be taken in inches, divide by 1728, to reduce into solid feet. If the girth be taken in inches, and the length in feet, divide the last product by 144.

Or find the area corresponding to the quarter girth in inches, in the table for measuring timber, No. 17; multiply it by the length of the timber, and the product will be the solidity in feet. Thus, if a piece of round timber be 18 feet long, and the quarter girth 24 inches; opposite 24, in the table, is $4.00 \times 18 = 72$ cubic feet.

The more girths are taken to obtain a mean girth, the better; and if a tree be very irregular, or if it be much smaller at one end than the other, it should be divided into several lengths, each part being as nearly cylindrical as possible, and the contents of each part found separately, and added together. In measuring the circumference of a tree, there should be a deduction, on account of the bark, of about one-half of an inch for ash, beech and lime; and from one to two inches, according to the thickness or age, for oak and elm.

All branches where the quarter girth is not less than 6 inches are reckoned as timber, and any part of the trunk less than 24 inches in circumference is not considered as timber, and is generally cut off.

When the squaring is not to be allowed for, take one-fifth of the girth squared, and multiply by twice the length, for the content. (See Keith's Measurer, 213.)

For a Pyramidal or Conical Figure.—Find the area of the base as before, and multiply by one-third of the perpendicular height.

For the Frustum of a Pyramid or Cone.—Multiply the areas of the two ends together: to the square root thereof add the two areas, and multiply by one-third of the height. Or $(\sqrt{Aa} + A + a) \frac{1}{3} H$.

Many of these computations will be more expeditiously and easily

solved by construction according to scale in a drawing and making the computations on such drawings.

For a Prismoid.—Find the area of the two bases, and also the area of a section parallel to and equidistant from the bases: then to four times the middle area add the other two areas, and multiply the sum by one-sixth of the length.

To ascertain the height of a tree, when growing, a long graduated rod may be used, or the height may be found by means of its shadow and a perpendicular stick. Thus, as the shadow of the stick is to the height of the stick, so is the shadow of the tree to the height of the tree. Or, attach a carpenter's rule, open to a right angle, to a rod or stout lath to fix in the ground, with one side of the rule horizontal and the other perpendicular—move from the tree till the top of the tree aligns with the inner ends of the rule—the spot at which the eye sees the two ends and top of the tree will, with the height of the eye from the ground, be the height of the tree.

Foreign Timber.

Foreign wood is extensively used in this country for house and ship-building. In calculating the value, any customs' duty payable on importation must be taken into account.

In the language of the customs, when a tree is sawn into thin pieces, not above seven inches broad, it is called batten; when above that breadth, such thin pieces are called deals. Imported timber is generally sold by the load, consisting of the following quantities:—Uuhewn timber, 40 cubic feet; squared timber, 50 cubic feet; 1-inch plank, 600 square feet; 1½-inch plank, 400 square feet; 2-inch plank, 300 square feet; 2½-inch plank, 240 square feet; 3-inch plank, 200 square feet; 3½-inch plank, 170 square feet; 4-inch plank, 150 square feet. A load also consists of

36½	Russian stand deals,	12 feet long,	1½ in. thick,	11 in. broad.
58½	Christiana	"	11	"
53½	Dram	"	10	"
3	Riga logs	are also a load.		

The value of foreign timber varies according to its quality and place of growth.

(k) FURNITURE, STOCK IN TRADE, &c.

Furniture.

Experience has shown that there is no standard of value for second-hand furniture. The nearest approach to it, perhaps, is to ascertain the selling price of the given article when new, and then deduct from such price one-third, or one-half, or two-thirds, according

to the actual condition and state of repair of the article in question. When an article is made of copper, lead, &c., its value may be estimated by the weight of the materials, it being known that new copper generally averages $1\frac{1}{2}$ lb. weight to the gallon; old copper is reckoned about 1 lb. to the gallon.

Stock in Trade; with notes on Cask Gauging.

Spirits, Wine, &c.—Spirits and other liquors are sold either in casks or bottles, but generally by sample. The value of spirits is dependent, to a great extent, upon the strength. The value of wine is regulated by the place of its growth, flavour, and age. Beer, ale, &c., are calculated according to the wholesale market prices. A few hints for measuring these liquors when they are contained in casks are subjoined.

To find the Content of a Cask.—If the cask be cylindrical, measure the diameter; find the area in the table of circular areas, No. 16, and multiply by the perpendicular height or depth. Thus, if the diameter be 37 inches, the area in the table is 1075·21 inches \times depth or length (suppose 50) = 53760 inches, which by Table 15 (a) will show the contents to equal 193·87 gallons. Should the measurement be applied to circular cisterns, the gallons can be reduced to bushels by dividing by 8.

There are proper instruments for gauging casks, but for want of these, a common rule or graduated tape may be used. The diameter of any cylindrical body may be found by dividing the circumference by 3·1416.

If the cask be in the form of the middle zone of a spheroid, find the head and bung diameter separately. If the difference be not more than 6 inches, multiply it by ·68; if more by ·7; and add the product to the head diameter, using the sum as the mean diameter of a cylinder, and finding the contents accordingly. *Ex.*: Head diameter, 24 inches; bung diameter, (*i.e.*, the diameter of the middle of the cask) 32; length, 40; $32 - 24 = 8 \times \cdot 7 = 5\cdot6 + 24 = 29\cdot6$, the area of which will be 688·4 inches = 2·418 gallons, and $\times 40 = 99\cdot272$ gallons.

It is usual in cask gauging to consider all casks as spheroidal; and, when they obviously differ from this form, to make an allowance on the length. See "Bateman's Excise Officer's Manual" for a table showing the usual forms and sizes of casks imported into the United Kingdom, and the allowances for reducing them to spheroids.

Another mode of obtaining an approximation to the content of a small cask is to measure what is called the *diagonal*, by inserting a rod or walking-stick into the bung-hole, in such a manner that the extremity of the rod may meet the head where it intersects the staves of the opposite side of the cask; and having thus ascertained the diagonal in inches, refer to Table 20 for the content of the cask in gallons.

To ullage a Cask.—Divide the wet inches by the bung diameter, if the cask be lying (or by the length, if standing), to three places of

decimals ; and if the quotient exceed $\cdot 500$, add to such quotient one-fourth of the excess ; but if it be less than $\cdot 500$, subtract one-fourth of the deficiency ; then multiply the number of gallons which the cask contains when full by the sum in the first case, or by the remainder in the second, and the product will be the ullage, or quantity of liquor in gallons, or nearly so.

(1) FARMING STOCK.

The value of growing crops is regulated by the quantity, kind, state of forwardness, and the estimated expense necessary for gathering and preparing them for the market. The price of live stock, potatoes, corn, hay, straw, &c., can be estimated according to the published market prices, allowance being made for a forced sale, if such be the case. In large towns the latter articles can best be sold in the proper market by brokers extensively employed in the business.

To find the Weight of Cattle.—Take the girth close behind the shoulder, and the length from the fore part of the shoulder-blade, along the back, to the bone at the tail, which is in a vertical line with the buttock, both in feet. Multiply the square of the girth by five times the length, and divide the product by 21 : the quotient is the weight, nearly, of the four quarters, in stones of 14 lb. each. Example : Girth, $6\frac{1}{2}$ feet : length, $5\frac{1}{2}$ feet. Then, $6\cdot5 \times 6\cdot5 = 42\cdot25 \times (5\cdot25 \times 5 =) 26\cdot25 = 1109\cdot1 \div 21 = 52$ stones, 11 lb. This rule gives about one-twentieth less than is found in very fat cattle, and about one-twentieth more than in very lean cattle. The four quarters are little more than half the weight of the living animal ; the skin weighing about the eighteenth part, and the tallow about one-twelfth part. The average weight as carcasses in Manchester, exclusive of offal, was returned some time ago as follows : cattle, 560 lb. ; sheep, 68 $\frac{1}{2}$ lb. ; lambs, 37 lb. ; calves, 90 lb. The London averages are considerably higher.

To ascertain the Quantity of Corn or Grain on the Floor of a Warehouse or Malt-house.—Level the surface as nearly as possible, and then find the mean depth, by taking a sufficient number of dips in various places and averaging them. Multiply the length by the breadth, and the product by the mean depth. If the calculation is made in inches, divide the product by 2218·192, or multiply it by $\cdot 000451$, to reduce the content to bushels ; or refer to Table 19, for reducing inches into bushels.

The quantity of corn in a square or rectangular vessel is found in the same manner ; and the content of any other vessel may be ascertained by the rules for measuring timber (*i. ante*). If the vessel be cylindrical, an easy mode of finding the content is, to measure the diameter, and find the area in gallons, as in cask gauging, and divide by 8 for bushels.

Hay.—The value of hay is said to depend upon the preservation of the green colour of the grass, and upon its being juicy, fresh, and free from all sorts of mustiness. (Mac. Com. Dict.)

To measure an oblong stack, take the height from the ground to the eaves, and add one-third (some writers say one-half) of the height from the eaves to the top. Multiply the sum by the length, and the product by the breadth, all in feet. Divide the amount by 27; the quotient is the content in cubic yards. Ex.: a stack is 60 feet long, 30 broad, 12 in height from the ground to the eaves, and 9 from the eaves to the top. Then $12 + (9 \div 3) = 15$, $15 \times 30 = 450$, $450 \times 60 = 27000 \div 27 = 1000$; being 9000 stones of old hay. (*Vide infra*).

Another mode of measuring a round hay-stack is to divide it into as many sections as it is yards in height, and take the circumference in yards of each section in the middle of the section. Then find the area of each section, and add them together; the sum will be the content in solid yards. The areas are found by table of circular areas (16), which may be extended to other numbers by multiplying the square of the circumference by .079577.

A yard of new hay is calculated to contain 6 stones; if the stack has stood a considerable time, 8 stones; and if it be old hay, 9 stones.

In London hay is sold by the truss, weighing 56 lb., so that a load is exactly a ton; except that new hay, until 4th September, weighs 60 lb.

A truss of hay or clover is 3 feet long and 2 feet wide, and if well settled, 16 inches deep: this gives $11\frac{2}{3}$ cubic yards to a ton. If 17 inches deep, $12\frac{1}{3}$ yards to a ton. If 18 inches, $13\frac{1}{3}$ yards to a ton. If a cubic foot be found to weigh 5 lb. 3 oz., it will require 16 yards to make a ton; 5 lb. 8 oz., 16 yards; 6 lb., 14 yards; 6 lb. 6 oz., 13 yards; 6 lb. 14 oz., 12 yards; 7 lb. 8 oz., 11 yards; 8 lb. 4 oz., 10 yards; 9 lb. 3 oz., 9 yards; and 10 lb., 8 yards.

Manure.—Heaps of manure are measured by the rules for measuring timber or corn (*supra*, as to corn, division (i) as to timber). If the content be shown in feet, it may be reduced into yards by dividing by 27, or into loads by dividing by 40.

To find the number of heaps of manure required for an acre of land, ascertain how many heaps one load may be divided into; multiply the distance of each row by the distance of each heap, and divide 4840 by the product; divide the dividend by the number of heaps into which a load is to be divided.

(m) SHIPS.

The value of ships and vessels is dependent on their size, fittings-up, age, wear and classification, and the probability of their being usefully and profitably employed.

The mode in which the tonnage of merchant vessels is to be measured is defined by 17 & 18 Vict. c. 104; which tonnage is required to be entered in the ship's register, and carved on the main beam, so that it may be readily ascertained. (Sect. 25.)

APPENDIX C.

USEFUL TABLES.

Introductory Remarks.

TABLE 2. (*Number of days between one month and another.*) Where the day is not the same in both months, add or subtract the difference. Thus, from the 7th April to the 7th August is 122 days; but if required to the 19th August, add 12 days, making 134 days, and if to the 2nd August, subtract five days, making 117 days.

If both days are to be included, add one day, and in leap year add one day after 28th February.

TABLE 3. (*Income and salaries.*) Multiply the sum *per annum* by the number of days, and the table will show the amount.

Example. Salary £100 a year, amount for 10 days required. $100 \times 10 = 1000$; and the table shows the amount to be £2 14s. 9½d.

Should the result be a larger number than any in the table, the amount required will be found as in the following example.

Required amount of salary at £100 a year, for 30 days. $100 \times 30 = 3000$. Refer to the decimal column for 300, and take the decimal point as one figure to its right, and the amount will be 8·21918, and the value in money of the decimals will (see Table 12) make the entire amount £8 4s. 5d.

TABLE 5 (*Interest*) is explained in a note at foot.

TABLE 6 shows the amount of £1, improved at compound interest for any number of years to 70, at 3, 4, or 5 *per cent.*

TABLE 7 is a table of the present value of £1 *per annum* for years certain; to pay interest at rates specified, and replace capital at 4 *per cent.* (See title "Annuities," in Appendix B, *ante*).

TABLE 8 (*Present value of £1 due at end of given number of years*) is of use in calculating the value of deferred payments, or reversionary interests, and is explained in Appendix B. The rule is to multiply the sum by the decimal in the table.

Example. Required the present value, at 4 *per cent.*, of £100, to be received at the end of 10 years. The decimal in the table is ·6756, which, multiplied by 100 (the decimal point moved 2 figures) will give 67·56 = (by Table 12) £67 11s. 2½d.

TABLES 9, 10 and 11 (*Values of annuity on a single life*) show the values for a £1 a year. The values must be multiplied by the pounds and decimals of a pound in the annuity the value of which is to be calculated.

Example. Annuity of £10 on female life of 35 at 4 *per cent.* Table 9 gives the value of £1 a year, at 16.88; which $\times 10$, the value required, will be £168.8 or (see Table 12) £168 16s.

TABLE 14 (*Square measure*).

With the exception of Table (c), giving the yards and feet in perches, the tables in No. 14; as well as all the tables of cubic measure in No. 15, are based on the application to all numbers of the decimals of units, by the simple alteration of the place of the decimal point.

The 1st column gives the number of units, or of decimals of units, and the other columns give the multiples of the extent stated in the heading, the figures and decimals being marked in the 2nd column, and the other columns giving the number of places of figures, or the place of the decimal.

Subdivision (a), showing the contents of inches in feet, gives in the 1st column the number of units: in the 2nd column the contents of the numbers multiplied by 100,000 (C M): the 3rd, the number of figures, in the numbers multiplied by 10,000 (X M): the 4th, the numbers multiplied by 1000 (M): the 5th, the numbers multiplied by 100 (C): the 6th, by 10 (X): and the 7th, units (U).

Example. Required the contents in feet of 131,000 inches.

100,000 (1 C M)	=	694.50
30,000 (3 X M)	=	208.35 (3 places of figures).
1,000 (1 M)	=	6.95 (1 figure).
100 (1 C)	=	.69 (1st decimal).

Contents = 910.49, or say 910½ feet.

It will seldom be necessary to take more than two places of decimals, adding one in the second place, should the third be 5 or more.

Subdivision (b) not only gives the decimals of the first place, as shown in the table, but also the decimals of the second place (hundredths), or of the third or any other place, by altering the position of the decimal points: thus, .09 of a foot = 12.96 inches, and .009 = 1.296.

From this table can also be ascertained the number of inches in any number of feet, thus: required inches in 96 feet. As 9 would give 4 places of figures, 90 would give 5 places, and, the multiples being 10, every figure beyond those in the table will be 0; the 90 feet will therefore contain 12960 inches, and the 6 feet, 864 inches. Together 13824 inches.

Subdivision (c) gives the number of yards, and number of feet in perches, up to 9; and will be readily made applicable to any multiple of the units.

Subdivision (d). (*Contents of yards in acres and decimals of an acre.*) This table will be used in the same manner as (a). **Example.** Required contents of 185,400 yards, to 2 places of decimals.

100,000	(1 C M)	=	20·66
80,000	(8 X M)	=	16·53
5,000	(5 M)	=	1·03
400	(4 C)	=	·08
			Acres 38·30

Subdivision (e) (*Decimals of an acre*) will give the value of ·3 in the last example at 4 perches 24·2 yards.

TABLE 15. (*Squares with side 11 to 170.*) The use of this table will not be limited to the ascertaining the square of a side having whole numbers, but to one having numbers and decimals. For example, required the contents of a square of which the side is 15·7. The contents will be the same as those of a side of 157, taking 2 as decimals, and will be 246·49.

The table will also be applicable to any numbers, whether whole numbers or decimals, which may be double or treble or quadruple any number in the table, by simply multiplying by 4 for the double, 9 for the treble number, and 16 for the quadruple number. Also for half, a third, or fourth part, on dividing by 4, 9, or 16. For ten times the number $\times 100$.

The examples are confined to quantities within the table, that the accuracy of the rules may be at once seen; the rules apply, however, to any quantities.

Example 1. Required contents of square with side of 40, from the tabular value of side of 20.

The contents of square with side of 20 are, by table, 400, which $\times 4 = 1600$, which the table shows to give side of 40.

Example 2. Required contents with side of 60 in like manner from side of 20. Here 20 will give 400, which $\times 9 = 3600$, which the table will show is the square of 60.

It is not necessary to give examples of the division by 4 or 9, for contents of the half or third of side where whole numbers are concerned, but it may be of use to give an example where decimals are used.

Example 3. Required contents of square with side of 80·5. This will be the half of 161, and consequently $25921 \div 4$, or 6480·25 will be the contents required.

Example 4. Required contents of square with side of 52, or one-third of 156. Here $24336 \div 9 = 2704$ will be the contents.

A most important use of the table is in the calculation of the contents in gallons of circular areas, which can readily be ascertained by this and the two short tables Nos. 16 and 17.

TABLE 16. (*Circular areas.*) *Subdivision (a)* gives the area from diameter, and *Subdivision (b)*, from circumference.

The table may be made applicable to areas of larger or smaller D. or C. than those stated; and also for fractions.

1. Thus, for double any number, take four times the area of that number; for treble the number, multiply by nine.

2. For half the number, divide by four; and for one-third of the number, divide by nine.

3. For four times, or for one-fourth, it would be requisite to multiply or divide by sixteen.

4. For numbers and decimals, the area can be ascertained by adding to the square of the number that of the decimal, and twice the number multiplied by the decimal.

In giving examples, some will be taken in which the areas of the multiple or part are both given in the table.

Example on Case 1.—Diameter 10, and area 78·5, &c. (see table). The area of 20 will be four times the extent, or 314·1, &c. (see table, area of 20 D.).

The area of D. 10 being as above, multiply by 9 for that of 30, and it will be found to equal the area of 30, as in the table.

Case 2 is sufficiently explained by the examples before given, by commencing with the larger diameter; nor need any example be given of Case 3.

Case 4. The most valuable modification of the table will be the making it available for the easy calculation of areas where the diameter or circumference contains a number and decimal beyond the direct scope of the table.

The practical application of proposition 4 in the 2nd book of Euclid will serve the desired purpose, by adding to the square of the number that of the decimal, and twice the number multiplied by the decimal; this gives the square, which $\times \cdot 7854$ gives the area.

In practice, the square of the decimal will be unimportant, and the necessity for $\times \cdot 7854$ will be avoided by using the next table.

Example. Required the circular area, where the diameter = 40·3. Here 40×40 gives 1600, and $40 \times \cdot 6 = 24$: together 1624.

The square of the decimal is not added, being only ·09, or nine hundredths of an inch.

The following table gives the circular area, where the square with side equal to the diameter contains the 1624 inches, as being 1275½ inches. The gallons are given in Table 19 (a) for each inch in depth.

This table is applicable to the contents of superficial areas, and those of which the depth is an unit of measurement; thus, the measurement being in inches, the contents in inches will be given, and the solid contents will be ascertained by multiplying the area by the number of units, or the units and decimals of an unit in the depth. For example: the area is found to be 78·5398 inches, and the depth 10 inches, the contents in inches will be 785·398. If the contents in gallons are required, Table 19 (a) will give the contents.

TABLE 17. (*Squares and circular areas with side and diameter equal.*) An example is given with the table which will save much trouble, whenever the contents of a square and a circle have to be compared, or the circular area ascertained from the contents of the square, which must otherwise be done by multiplying the square by .7854, the proportion which the contents of a circle bear to those of a square.

TABLE 18. (*For measuring timber.*) This table is explained in Appendix B., division (i).

TABLE 19. (*Cubic measures.*)

Subdivision (a). (*Contents of inches in gallons or bushels.*)

Example. Required contents in gallons of 42,000 inches.

$$\begin{array}{r} \text{By Table 19 (a), 40,000 (4 X M) = 144.26} \\ \quad \quad \quad 2000 \quad (2 M) = \quad 7.213 \\ \hline \quad \quad \quad 151.473 \end{array}$$

In practice this would be taken at 151½.

For bushels, divide by 8, and the bushels will be 18.934.

Subdivision (b). (*Decimals of a gallon and contents of gallons in inches.*) The table shows the decimals of the first place, and for those of second or any other place, remove the decimal point, thus, for .05, the inches will be 13.8, &c., for .005, 1.38, &c.

For numbers, remove the decimal point higher, thus 5 = 1386.37, &c., 50 = 13863.7, &c.

For contents of bushels, or decimals of a bushel, in inches, multiply contents of gallons, or decimals of a gallon, by 8.

Subdivision (c). (*Contents of inches in feet.*)

Subdivision (d). (*Decimals of a foot.*)

These subdivisions will be applied in the same manner as under the previous examples.

Subdivision (e). (*Contents of feet in bushels, or bushels in feet.*) This table, though only giving the units, is, like the other tables, applicable to any numbers by simply changing the position of the decimal points, or adding the figure 0.

Example. Required the number of bushels which a division in a granary containing 186 feet will hold.

$$\begin{array}{r} 100 \text{ feet} = 77.9 \\ 80 \text{ ,,} = 62.32 \\ 6 \text{ ,,} = 4.674 \\ \hline \text{bushels} = 144.894 \end{array}$$

Example 2. Required the number of feet requisite to hold 145 bushels.

100 bushels	=	128.36
40 "	=	51.344
5 "	=	6.418
		<hr/>
		186.122

Subdivisions (f) and (g). (*Contents of feet in yards and decimals of a yard.*) These tables are used as the previous subdivisions, and the subdivision (*g*) not only gives directly the decimals of the first place, but from them can be found the decimals of any other place, or the number of feet in any number of yards, in the same manner as shown in reference to subdivision (*b*). For example: .08 of a yard = 2.16 feet, 8 yards = 216 feet, 80 yards = 2160, &c.

TABLE 20. (*Diagonal line for cask gauging.*)

The use of this table is explained *ante*, Appendix B., division *k*.

TABLE 21. (*Specific gravities.*) This table is of use in estimating the weight if the measurement given, or the measurement if the weight given.

TABLE 23. (*For purchasing leaseholds and annuities for years certain.*) This and the two following tables are introduced as likely to be useful in deciding on the value of a proposed investment, and for easy reference are placed at the end of the work.

Example. A leasehold for fifteen years the net income of which may be fairly estimated at £100 a year is offered at £980, the expenses of the purchase being estimated at £20, total £1000. The table shows that it would pay 5 *per cent.*, with a sufficient surplus, if invested at 4 *per cent.*, to replace the purchase-money at the end of the term, and that it would equal a perpetuity of £4 8s. 11d.

It should be borne in mind, that, as part of the purchase-money, the incidental expenses should be considered in all cases, and proper deductions made to fix a safe net rental.

TABLE 24. (*Leaseholds, &c., equal to perpetuity of £4.*) This table will be useful in estimating the terminable income equal to a perpetuity.

TABLE 25. (*Prices at which stock will pay named rate of interest.*) This table is added, as it will be very useful in estimating, by comparison, the advantages to be derived from investment in any particular stock.

Example. Consols at 92.3; interest made, 3½ *per cent.* East India Five per Cents., 125; interest made, 4 *per cent.*

LIST OF GENERAL TABLES FOLLOWING.

- No.
1. Prices per cwt. and lb.
 2. Number of days between one month and another.
 3. Factors for calculating income, salaries, &c.
 4. Commission.
 5. Interest.
 6. Amount of £1 improved at compound interest.
 7. Present value of £1 *per annum* for years or in perpetuity. (For purchasing leases, estates, &c.)
 8. Present value of £1 due at end of given number of years.
 9. Value of annuity on single life at 4 *per cent*.
 10. " " " 3 "
 11. " " " 5 "
 12. Decimals of a pound sterling.
 13. " perpetuity.
 14. Square measures.
 - (a) Contents : inches in feet.
 - (b) Decimals of a foot.
 - (c) Number of yards and feet in perches.
 - (d) Contents of yards in acres and decimals of an acre.
 - (e) Value of decimals of an acre.
 15. Squares with side 11 to 170.
 16. Circular areas.
 17. Squares and circular areas with side and diameter equal.
 18. For measuring timber.
 19. Cubic measures.
 - (a) Contents of inches in gallons.
 - (b) Decimals of a gallon in inches.
 - (c) Contents of inches in feet.
 - (d) Decimals of a foot in inches.
 - (e) Feet = bushels, and bushels = feet.
 - (f) Contents of yards in feet.
 - (g) Decimals of a yard in feet.
 20. Diagonal line for cask gauging.
 21. Specific gravities.
 22. Miscellaneous weights and measures.
 23. For showing income on purchase of leaseholds or annuities.
 24. Leaseholds and annuities for years certain equal in value to a perpetuity of £4.
 25. Prices at which stock paying dividends from 3 to 4 *per cent. per annum* will pay interest from 3½ to 6 *per cent*.

No. 1.
PRICES PER CWT. AND PER POUND.

lb.	Cwt.	lb.	Cwt.	lb.	Cwt.	lb.	Cwt.
d.	£ s. d.	d.	£ s. d.	d.	£ s. d.	d.	£ s. d.
1	0 2 4	3	1 8 0	5½	2 13 8	15	7 0 0
2	0 4 8	3½	1 10 4	6	2 16 0	16	7 9 4
3	0 7 0	3¾	1 12 8	7	3 5 4	17	7 18 8
1	0 9 4	3½	1 15 0	8	3 14 8	18	8 8 0
1½	0 11 8	4	1 17 4	9	4 4 0	19	8 17 4
1¾	0 14 0	4½	1 19 8	10	4 13 4	20	9 6 8
1½	0 16 4	4¾	2 2 0	11	5 2 8	21	9 16 0
2	0 18 8	4½	2 4 4	12	5 12 0	22	10 5 4
2½	1 1 0	5	2 6 8	13	6 1 4	23	10 14 8
2¾	1 3 4	5½	2 9 0	14	6 10 8	24	11 4 0
3	1 5 8	5½	2 11 4				

No. 2.

FOR FINDING THE NUMBER OF DAYS FROM ANY DAY IN ONE MONTH TO THE CORRESPONDING DAY IN ANY OTHER MONTH.

TO		Jan.	Feb.	March.	April.	May.	June.	July.	August.	Sept.	Oct.	Nov.	Dec.
FROM	January	365	31	59	90	120	151	181	212	243	273	304	334
	February ..	334	365	28	59	89	120	150	181	212	242	273	303
	March	306	337	365	31	61	92	122	153	184	214	245	275
	April	275	306	334	365	30	61	91	122	153	183	214	244
	May	245	276	304	335	365	31	61	92	123	153	184	214
	June	214	245	273	304	334	365	30	61	92	122	153	183
	July	184	215	243	274	304	335	365	31	62	92	123	153
	August	153	184	212	243	273	304	334	365	31	61	92	122
	September ..	122	153	181	212	242	273	303	334	365	30	61	91
	October	92	123	151	182	212	243	273	304	335	365	31	61
	November	61	92	120	151	181	212	242	273	304	334	365	30
	December	31	62	90	121	151	182	212	243	274	304	335	365

No. 3.

FACTORS FOR CALCULATING INCOME, SALARIES, &c.

Per an.	Per diem.		Per an.	Per diem.		Per an.	Per diem.	
	Decimal.	Value.		Decimal.	Value.		Decimal.	Value.
£		s. d.	£		s. d.	£		£ s. d.
10	·027397	0 6½	70	·191780	3 10	400	1·095890	1 1 11
15	·041096	0 10	80	·219178	4 4½	500	1·369863	1 7 4½
20	·054794	1 1	90	·246575	4 11½	600	1·643836	1 12 10½
30	·082192	1 7½	100	·273973	5 5½	700	1·917808	1 18 4½
40	·109589	2 2½	150	·410950	8 2½	800	2·191781	2 3 10
50	·136986	2 8½	200	·547945	10 11½	900	2·465753	2 9 3½
52	·142466	2 10½	300	·821918	16 5½	1000	2·739726	2 14 9½
60	·164383	3 3½						

No. 4.

COMMISSION.

Amount.	At $\frac{1}{2}$ per Cent.			At $\frac{1}{4}$ per Cent.			At $\frac{1}{2}$ per Cent.			At $\frac{3}{4}$ per Cent.			At 1 per Cent.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1	0	0	0 $\frac{1}{4}$	0	0	0 $\frac{1}{2}$	0	0	1	0	0	1 $\frac{3}{4}$	0	0	2 $\frac{1}{4}$
2	0	0	0 $\frac{1}{2}$	0	0	1	0	0	2 $\frac{1}{4}$	0	0	3 $\frac{1}{2}$	0	0	4 $\frac{1}{2}$
3	0	0	0 $\frac{3}{4}$	0	0	1 $\frac{1}{4}$	0	0	3 $\frac{1}{2}$	0	0	5 $\frac{1}{4}$	0	0	7
4	0	0	1	0	0	2 $\frac{1}{4}$	0	0	4 $\frac{1}{2}$	0	0	7	0	0	9 $\frac{1}{2}$
5	0	0	1 $\frac{1}{2}$	0	0	3	0	0	6	0	0	9	0	1	0
6	0	0	1 $\frac{3}{4}$	0	0	3 $\frac{1}{2}$	0	0	7	0	0	10 $\frac{3}{4}$	0	1	2 $\frac{1}{4}$
7	0	0	2	0	0	4	0	0	8 $\frac{1}{4}$	0	1	0 $\frac{1}{2}$	0	1	4 $\frac{1}{2}$
8	0	0	2 $\frac{1}{4}$	0	0	4 $\frac{1}{2}$	0	0	9 $\frac{1}{2}$	0	1	2 $\frac{1}{4}$	0	1	7
9	0	0	2 $\frac{1}{2}$	0	0	5 $\frac{1}{4}$	0	0	10 $\frac{1}{2}$	0	1	4	0	1	9 $\frac{1}{2}$
10	0	0	3	0	0	6	0	1	0	0	1	6	0	2	0
20	0	0	6	0	1	0	0	2	0	0	3	0	0	4	0
30	0	0	9	0	1	6	0	3	0	0	4	6	0	6	0
40	0	1	0	0	2	0	0	4	0	0	6	0	0	8	0
50	0	1	3	0	2	6	0	5	0	0	7	6	0	10	0
60	0	1	6	0	3	0	0	6	0	0	9	0	0	12	0
70	0	1	9	0	3	6	0	7	0	0	10	6	0	14	0
80	0	2	0	0	4	0	0	8	0	0	12	0	0	16	0
90	0	2	3	0	4	6	0	9	0	0	13	6	0	18	0
100	0	2	6	0	5	0	0	10	0	0	15	0	1	0	0
200	0	5	0	0	10	0	1	0	0	1	10	0	2	0	0
300	0	7	6	0	15	0	1	10	0	2	5	0	3	0	0
400	0	10	0	1	0	0	2	0	0	3	0	0	4	0	0
500	0	12	6	1	5	0	2	10	0	3	15	0	5	0	0
600	0	15	0	1	10	0	3	0	0	4	10	0	6	0	0
700	0	17	6	1	15	0	3	10	0	5	5	0	7	0	0
800	1	0	0	2	0	0	4	0	0	6	0	0	8	0	0
900	1	2	6	2	5	0	4	10	0	6	15	0	9	0	0
1,000	1	5	0	2	10	0	5	0	0	7	10	0	10	0	0
2,000	2	10	0	5	0	0	10	0	0	15	0	0	20	0	0
3,000	3	15	0	7	10	0	15	0	0	22	10	0	30	0	0
4,000	5	0	0	10	0	0	20	0	0	30	0	0	40	0	0
5,000	6	5	0	12	10	0	25	0	0	37	10	0	50	0	0
10,000	12	10	0	25	0	0	50	0	0	75	0	0	100	0	0

No. 5.

TO CALCULATE INTEREST FOR ANY NUMBER OF DAYS AND FOR ANY AMOUNT.

	3 per Cent.	3½ per Cent.	4 per Cent.	4½ per Cent.	5 per Cent.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
10,000	0 16 5·26	0 19 2·14	1 1 11·01	1 4 7·39	1 7 4·17
9,000	0 14 9·53	0 17 3·12	0 19 8·71	1 2 2·30	1 4 7·89
8,000	0 13 1·81	0 15 4·11	0 17 6·41	0 19 8·71	1 1 11·01
7,000	0 11 6·08	0 13 5·10	0 15 4·11	0 17 3·12	0 19 2·14
6,000	0 9 10·36	0 11 6·08	0 13 1·81	0 14 9·53	0 16 5·26
5,000	0 8 2·63	0 9 7·07	0 10 11·51	0 12 3·94	0 13 8·88
4,000	0 6 6·90	0 7 8·05	0 8 9·20	0 9 10·36	0 10 11·51
3,000	0 4 11·18	0 5 9·04	0 6 6·90	0 7 4·77	0 8 2·63
2,000	0 3 3·45	0 3 10·03	0 4 4·60	0 4 11·18	0 5 5·75
1,000	0 1 7·73	0 1 11·01	0 2 2·30	0 2 5·59	0 2 8·88
900	0 1 5·75	0 1 8·71	0 1 11·67	0 2 2·63	0 2 5·59
800	0 1 3·78	0 1 6·41	0 1 9·04	0 1 11·67	0 2 2·30
700	0 1 1·81	0 1 4·11	0 1 6·41	0 1 8·71	0 1 11·01
600	0 0 11·84	0 1 1·81	0 1 3·78	0 1 5·75	0 1 7·73
500	0 0 9·86	0 0 11·51	0 1 1·15	0 1 2·79	0 1 4·44
400	0 0 7·89	0 0 9·21	0 0 10·52	0 0 11·84	0 1 1·15
300	0 0 5·92	0 0 6·90	0 0 7·89	0 0 8·88	0 0 9·86
200	0 0 3·95	0 0 4·60	0 0 5·26	0 0 5·92	0 0 6·58
100	0 0 1·97	0 0 2·30	0 0 2·63	0 0 2·96	0 0 3·29
90	0 0 1·78	0 0 2·07	0 0 2·37	0 0 2·66	0 0 2·96
80	0 0 1·58	0 0 1·84	0 0 2·10	0 0 2·37	0 0 2·63
70	0 0 1·38	0 0 1·61	0 0 1·84	0 0 2·07	0 0 2·30
60	0 0 1·18	0 0 1·38	0 0 1·58	0 0 1·78	0 0 1·97
50	0 0 0·99	0 0 1·15	0 0 1·32	0 0 1·48	0 0 1·64
40	0 0 0·79	0 0 0·92	0 0 1·05	0 0 1·18	0 0 1·32
30	0 0 0·59	0 0 0·69	0 0 0·79	0 0 0·89	0 0 1·00
20	0 0 0·39	0 0 0·46	0 0 0·53	0 0 0·59	0 0 0·66
10	0 0 0·20	0 0 0·23	0 0 0·26	0 0 0·30	0 0 0·33
9	0 0 0·18	0 0 0·21	0 0 0·24	0 0 0·27	0 0 0·30
8	0 0 0·16	0 0 0·18	0 0 0·21	0 0 0·24	0 0 0·26
7	0 0 0·14	0 0 0·16	0 0 0·18	0 0 0·21	0 0 0·23
6	0 0 0·12	0 0 0·14	0 0 0·16	0 0 0·18	0 0 0·20
5	0 0 0·10	0 0 0·12	0 0 0·13	0 0 0·15	0 0 0·16
4	0 0 0·08	0 0 0·09	0 0 0·11	0 0 0·12	0 0 0·13
3	0 0 0·06	0 0 0·07	0 0 0·08	0 0 0·09	0 0 0·10
2	0 0 0·04	0 0 0·05	0 0 0·05	0 0 0·06	0 0 0·07
1	0 0 0·02	0 0 0·02	0 0 0·03	0 0 0·03	0 0 0·03

[Multiply sum by days, and take amount from Table.]

No. 6.

SHOWING THE AMOUNT OF £1, IMPROVED AT COMPOUND INTEREST.

Years.	3 per Cent.	4 per Cent.	5 per Cent.	Years.	3 per Cent.	4 per Cent.	5 per Cent.
1	1.0300	1.0400	1.0500	36	2.8988	4.1039	5.7918
2	1.0609	1.0816	1.1025	37	2.9852	4.2681	6.0614
3	1.0927	1.1249	1.1578	38	3.0748	4.4388	6.3855
4	1.1255	1.1698	1.2155	39	3.1670	4.6164	6.7047
5	1.1593	1.2166	1.2753	40	3.2620	4.8010	7.0400
6	1.1940	1.2653	1.3401	41	3.3599	4.9931	7.3920
7	1.2299	1.3159	1.4071	42	3.4607	5.1928	7.7616
8	1.2668	1.3686	1.4774	43	3.5645	5.4005	8.1497
9	1.3048	1.4233	1.5513	44	3.6714	5.6165	8.5571
10	1.3439	1.4802	1.6289	45	3.7816	5.8412	8.9850
11	1.3842	1.5394	1.7103	46	3.8950	6.0748	9.4342
12	1.4258	1.6010	1.7958	47	4.0119	6.3178	9.9060
13	1.4685	1.6651	1.8856	48	4.1322	6.5705	10.4013
14	1.5126	1.7317	1.9799	49	4.2562	6.8333	10.9213
15	1.5580	1.8009	2.0789	50	4.3839	7.1067	10.4674
16	1.6047	1.8730	2.1829	51	4.5154	7.3909	12.0408
17	1.6528	1.9479	2.2920	52	4.6509	7.6866	12.6428
18	1.7024	2.0258	2.4066	53	4.7904	7.9940	13.2749
19	1.7535	2.1068	2.5260	54	4.9341	8.3138	13.9387
20	1.8061	2.1911	2.6533	55	5.0821	8.6464	14.6356
21	1.8603	2.2788	2.7860	56	5.2346	8.9922	15.3674
22	1.9161	2.3699	2.9253	57	5.3916	9.3510	16.1358
23	1.9736	2.4647	3.0715	58	5.5534	9.7260	16.9426
24	2.0328	2.5633	3.2251	59	5.7200	10.1150	17.7897
25	2.0938	2.6658	3.3863	60	5.8916	10.5196	18.6792
26	2.1566	2.7725	3.5557	61	6.0683	10.9404	19.6131
27	2.2213	2.8834	3.7334	62	6.2504	11.3780	20.5938
28	2.2879	2.9987	3.9201	63	6.4379	11.8331	21.6235
29	2.3566	3.1180	4.1161	64	6.6310	12.3065	22.7047
30	2.4273	3.2434	4.3219	65	6.8300	12.7987	23.8399
31	2.5000	3.3731	4.5380	66	7.0349	13.3107	25.0319
32	2.5751	3.5080	4.7649	67	7.2459	13.8438	26.2835
33	2.6523	3.6484	5.0032	68	7.4633	14.3961	27.5977
34	2.7319	3.7943	5.2533	69	7.6872	14.9727	28.9775
35	2.8139	3.9461	5.5160	70	7.9178	15.5716	30.4264

EXAMPLES.—£1, in 15 years, at 3 per cent., will amount to 1.558, or £1:11:2; at 4 per cent., 1.8009, or £1:16:0; at 5 per cent., 2.0789, or £2:1:7.

2. In what time will £523 amount to £1087:5:7, at 5 per cent., compound interest? Divide the latter sum by the former, and refer to the table: thus, £1087:5:7 ÷ £523 = 2.0789 by table = 15 years, the answer.

No. 7.

PRESENT VALUE OF £1 PER ANNUM FOR YEARS CERTAIN.

To pay Interest at Rates below, and replace Capital at 4 per Cent.

Years.	4 per Cent.	5 per Cent.	6 per Cent.	7 per Cent.
1	·9615	·9524	·9434	·9346
2	1·8861	1·8512	1·8173	1·7851
3	2·7751	2·7002	2·6292	2·5618
4	3·6299	3·5027	3·3842	3·2734
5	4·4518	4·2621	4·0879	·9273
6	5·2421	·9810	·7447	4·5298
7	6·0021	5·6622	5·3588	5·0862
8	·7327	6·3080	·9337	·6014
9	7·4353	·9209	6·1815	6·0793
10	8·1109	7·5196	·9787	·5235
11	·7605	8·0548	7·4545	·9373
12	9·3851	·5798	·9019	7·3232
13	·9856	9·0790	8·3234	·6838
14	10·5631	·5539	·7408	8·0212
15	11·1184	10·0006	9·0958	·3374
16	·6523	·4632	·4500	·6341
17	12·1657	·8462	·7849	·9128
18	·6593	11·2368	10·1017	9·1749
19	13·1339	·6091	·4016	·4216
20	·5903	·9638	·6859	·6542
21	14·0292	12·3031	·9553	·8736
22	·4511	·6265	11·2109	10·0808
23	·8568	·9351	·4936	·2765
24	15·2470	13·2298	·6840	·4617
25	·6221	·5113	·9031	·6369
26	·9828	·7802	12·1113	·8029
27	16·3296	14·0374	·3094	·9603
28	·6631	·2831	·4980	11·1095
29	·9837	·5180	·6775	·2512
30	17·2920	·7427	·8485	·3856

No. 8.

SHOWING THE PRESENT VALUE OF ONE POUND, DUE AT THE
END OF A GIVEN NUMBER OF YEARS.

Years.	3 per Cent.	4 per Cent.	5 per Cent.	Years.	3 per Cent.	4 per Cent.	5 per Cent.
1	·9709	·9615	·9524	36	·3450	·2437	·1727
2	·9426	·9246	·9070	37	·3350	·2343	·1644
3	·9151	·8890	·8638	38	·3252	·2253	·1566
4	·8885	·8548	·8227	39	·3158	·2166	·1491
5	·8626	·8219	·7835	40	·3066	·2083	·1420
6	·8375	·7903	·7462	41	·2976	·2003	·1353
7	·8131	·7599	·7107	42	·2890	·1926	·1288
8	·7894	·7307	·6768	43	·2805	·1852	·1227
9	·7664	·7026	·6446	44	·2724	·1780	·1169
10	·7441	·6756	·6139	45	·2644	·1712	·1113
11	·7224	·6496	·5847	46	·2567	·1646	·1060
12	·7014	·6246	·5568	47	·2493	·1583	·1009
13	·6810	·6006	·5303	48	·2420	·1522	·0961
14	·6611	·5775	·5051	49	·2350	·1463	·0916
15	·6419	·5553	·4810	50	·2281	·1407	·0872
16	·6232	·5339	·4581	51	·2215	·1353	·0831
17	·6050	·5134	·4363	52	·2150	·1301	·0791
18	·5874	·4936	·4155	53	·2088	·1251	·0753
19	·5703	·4746	·3957	54	·2027	·1203	·0717
20	·5537	·4564	·3769	55	·1968	·1157	·0683
21	·5375	·4388	·3589	56	·1910	·1112	·0651
22	·5219	·4220	·3418	57	·1855	·1069	·0620
23	·5067	·4057	·3256	58	·1801	·1028	·0590
24	·4919	·3901	·3101	59	·1748	·0989	·0562
25	·4776	·3751	·2953	60	·1697	·0951	·0535
26	·4637	·3607	·2812	61	·1648	·0914	·0510
27	·4502	·3468	·2678	62	·1600	·0879	·0486
28	·4371	·3335	·2551	63	·1553	·0845	·0462
29	·4243	·3207	·2429	64	·1508	·0813	·0440
30	·4120	·3083	·2314	65	·1464	·0781	·0419
31	·4000	·2965	·2204	66	·1421	·0751	·0399
32	·3883	·2851	·2099	67	·1380	·0722	·0380
33	·3770	·2741	·1999	68	·1340	·0695	·0362
34	·3660	·2636	·1904	69	·1301	·0668	·0345
35	·3554	·2534	·1813	70	·1263	·0642	·0329

No. 9.

VALUE OF AN ANNUITY ON A SINGLE LIFE AT 4 PER CENT., ACCORDING TO THE GOVERNMENT PROBABILITIES OF LIFE.

[* Succession Duty Values.]

Age.	Female.	*	Age.	Female.	*	Age.	Female.	*	Age.	Female.	*
		Male.			Male.			Male.			Male.
1	19·814	19·067	26	18·018	16·867	51	13·906	12·139	76	5·959	5·115
2	·898	·191	27	17·904	·773	52	·641	11·857	77	·671	4·779
3	·951	·264	28	·788	·671	53	·366	·579	78	·406	·445
4	·980	·288	29	·668	·561	54	·082	·307	79	·162	·125
5	20·001	·270	30	·546	·444	55	12·790	·039	80	4·936	3·812
6	19·990	·216	31	·417	·320	56	·495	10·775	81	·731	·507
7	·955	·132	32	·286	·190	57	·195	·515	82	·521	·217
8	·892	·028	33	·153	·052	58	11·889	·255	83	·292	2·925
9	·807	18·910	34	·017	15·905	59	·578	9·991	84	·037	·631
10	·701	·782	35	16·880	·749	60	·261	·721	85	3·751	·349
11	·579	·644	36	·744	·585	61	10·933	·438	86	·441	·078
12	·449	·496	37	·605	·415	62	·598	·141	87	·114	1·846
13	·316	·339	38	·461	·240	63	·260	8·833	88	2·774	·649
14	·185	·174	39	·311	·061	64	9·919	·525	89	·437	·484
15	·059	·004	40	·156	14·875	65	·577	·216	90	·113	·335
16	18·959	17·837	41	15·993	·682	66	·233	7·908	91	1·818	·228
17	·866	·678	42	·823	·476	67	8·890	·620	92	·567	·074
18	·780	·533	43	·646	·261	68	·548	·334	93	·355	0·932
19	·696	·406	44	·462	·035	69	·202	·052	94	·161	·794
20	·613	·295	45	·269	13·798	70	7·858	6·774	95	0·981	·646
21	·523	·199	46	·066	·548	71	·526	·504	96	·772	·447
22	·430	·131	47	14·854	·281	72	·198	·240	97	·586	·240
23	·333	·068	48	·633	·005	73	6·876	5·974	98	·417	
24	·232	·006	49	·402	12·720	74	·566	·697	99	·240	
25	·127	16·940	50	·161	·430	75	·264	·410			

No. 10.

VALUE OF AN ANNUITY ON A SINGLE LIFE AT 3 PER CENT., ACCORDING TO THE GOVERNMENT PROBABILITIES OF LIFE.

Age.	Female.	Male.	Age.	Female.	Male.	Age.	Female.	Male.	Age.	Female.	Male.
1	24.177	23.032	26	21.247	19.666	51	15.581	13.435	76	6.292	5.310
2	.255	.156	27	.078	.522	52	.247	.093	77	5.975	4.941
3	.293	.216	28	20.905	.369	53	14.903	12.756	78	.685	.576
4	.300	.215	29	.729	.207	54	.550	.428	79	.418	.226
5	.297	.162	30	.549	.037	55	.191	.106	80	.170	3.882
6	.254	.066	31	.362	18.859	56	13.829	11.789	81	4.945	.546
7	.180	22.933	32	.172	.673	57	.463	.478	82	.716	.223
8	.073	.776	33	19.980	.478	58	.093	.167	83	.467	.015
9	23.939	.602	34	.785	.273	59	12.718	10.853	84	.192	2.707
10	.779	.417	35	.588	.057	60	.339	.534	85	3.886	.413
11	.600	.220	36	.394	17.833	61	11.950	.203	86	.556	.131
12	.411	.013	37	.195	.603	62	.556	9.858	87	.211	1.820
13	.220	21.795	38	18.990	.367	63	.159	.503	88	2.854	.686
14	.031	.568	39	.779	.126	64	10.761	.148	89	.502	.515
15	22.849	.337	40	.561	16.879	65	.364	8.795	90	.165	.362
16	.697	.109	41	.335	.624	66	9.968	.444	91	1.859	.251
17	.555	20.892	42	.101	.354	67	.575	.115	92	.600	.093
18	.420	.692	43	17.860	.075	68	.184	7.791	93	.381	0.947
19	.288	.513	44	.610	15.785	69	8.793	.471	94	.182	.806
20	.156	.353	45	.351	.482	70	.404	.158	95	0.997	.654
21	.016	.211	46	.082	.168	71	.031	6.852	96	.783	.452
22	21.872	.101	47	16.803	14.835	72	7.664	.554	97	.594	.243
23	.723	19.997	48	.514	.493	73	.306	.254	98	.422	
24	.569	.893	49	.215	.143	74	6.961	5.944	99	.243	
25	.411	.784	50	15.905	13.789	75	.627	.624			

No. 11.

VALUE OF AN ANNUITY ON A SINGLE LIFE AT 5 PER CENT., ACCORDING TO THE GOVERNMENT PROBABILITIES OF LIFE.

Age.	Female.	Male.	Age.	Female.	Male.	Age.	Female.	Male.	Age.	Female.	Male.
1	16·663	16·184	26	15·530	14·768	51	12·445	11·003	76	5·656	4·803
2	·744	·303	27	·451	·710	52	·229	10·767	77	·392	·478
3	·800	·380	28	·369	·646	53	·034	·532	78	·149	·272
4	·836	·416	29	·285	·577	54	11·830	·302	79	4·926	3·972
5	·867	·418	30	·198	·502	55	·590	·100	80	·719	·678
6	·871	·390	31	·107	·422	56	·347	9·877	81	·532	·392
7	·855	·336	32	·013	·337	57	·096	·657	82	·340	·117
8	·817	·266	33	14·917	·105	58	10·840	·435	83	·129	2·840
9	·759	·183	34	·820	13·997	59	·579	·209	84	3·892	·559
10	·685	·092	35	·720	·882	60	·311	8·977	85	·625	·289
11	·596	15·992	36	·623	·759	61	·031	·732	86	·332	·028
12	·499	·884	37	·523	·632	62	9·744	·473	87	·022	1·804
13	·403	·768	38	·418	·499	63	·476	·202	88	2·699	·613
14	·307	·644	39	·309	·363	64	·181	7·930	89	·376	·453
15	·214	·516	40	·195	·221	65	8·884	·655	90	·064	·309
16	·142	·390	41	·073	·072	66	·584	·379	91	1·779	·206
17	·078	·271	42	13·946	12·911	67	·284	·121	92	·535	·055
18	·018	·153	43	·813	·743	68	7·982	6·864	93	·329	0·917
19	15·961	·060	44	·673	·563	69	·676	·608	94	·141	·783
20	·905	14·982	45	·525	·373	70	·369	·355	95	0·966	·637
21	·843	·916	46	·368	·172	71	·072	·107	96	·761	·442
22	·778	·876	47	·202	11·954	72	6·778	5·864	97	·579	·238
23	·711	·841	48	·028	·726	73	·488	·616	98	·413	
24	·678*	·807	49	12·845	·490	74	·207	·356	99	·238	
25	·606*	·807	50	·652	·248	75	5·934	·085			

* These values are calculated agreeably with the logarithms of the probabilities given by Mr. Finlaison in his Report (p. 58), but in practice it will be better to assume the life of 24 as 14·828, taking the arithmetic mean between 23 and 25.

No. 12.

DECIMALS OF EVERY PENNY AND FARTHING IN THE POUND.

PENCE.												
Shillings.	0	1	2	3	4	5	6	7	8	9	10	11
0	...	·004	·008	·013	·017	·021	·025	·029	·033	·038	·042	·046
1	·05	·054	·058	·063	·067	·071	·075	·079	·083	·088	·092	·096
2	·1	·104	·108	·113	·117	·121	·125	·129	·133	·138	·142	·146
3	·15	·154	·158	·163	·167	·171	·175	·179	·183	·188	·192	·196
4	·2	·204	·208	·213	·217	·221	·225	·229	·233	·238	·242	·246
5	·25	·254	·258	·263	·267	·271	·275	·279	·283	·288	·292	·296
6	·3	·304	·308	·313	·317	·321	·325	·329	·333	·338	·342	·346
7	·35	·354	·358	·363	·367	·371	·375	·379	·383	·388	·392	·396
8	·4	·404	·408	·413	·417	·421	·425	·429	·433	·438	·442	·446
9	·45	·454	·458	·463	·467	·471	·475	·479	·483	·488	·492	·496
10	·5	·504	·508	·513	·517	·521	·525	·529	·533	·538	·542	·546
11	·55	·554	·558	·563	·567	·571	·575	·579	·583	·588	·592	·596
12	·6	·604	·608	·613	·617	·621	·625	·629	·633	·638	·642	·646
13	·65	·654	·658	·663	·667	·671	·675	·679	·683	·688	·692	·696
14	·7	·704	·708	·713	·717	·721	·725	·729	·733	·738	·742	·746
15	·75	·754	·758	·763	·767	·771	·775	·779	·783	·788	·792	·796
16	·8	·804	·808	·813	·817	·821	·825	·829	·833	·838	·842	·846
17	·85	·854	·858	·863	·867	·871	·875	·879	·883	·888	·892	·896
18	·9	·904	·908	·913	·917	·921	·925	·929	·933	·938	·942	·946
19	·95	·954	·958	·963	·967	·971	·975	·979	·983	·988	·992	·996

20 Shillings = 10.

$\frac{1}{4} = \cdot001.$ $\frac{1}{2} = \cdot002.$ $\frac{3}{4} = \cdot003.$

20 Shillings = 10.

 $\frac{1}{4} = \cdot 001.$ $\frac{1}{8} = \cdot 002.$ $\frac{1}{16} = \cdot 003.$

No. 13.

DECIMALS OF A PERPETUITY.

At Four per Cent.		At Four-and-a-half per Cent.		At Five per Cent.	
Years.		Years.		Years.	
25 =	Perpetuity.	22-22, &c. =	Perpetuity.	20 =	Perpetuity.
24	·96	22	·989	19	·95
23	·92	21	·945	18	·9
22	·88	20	·8999	17	·85
21	·84	19	·855	16	·8
20	·80	18	·81	15	·75
19	·76	17	·765	14	·7
18	·72	16	·720	13	·65
17	·68	15	·675	12	·6
16	·64	14	·630	11	·55
15	·6	13	·585	10	·5
14	·56	12	·540	9	·45
13	·52	11	·495	8	·4
12	·48	10	·4499	7	·35
11	·44	9	·405	6	·3
10	·40	8	·360	5	·25
9	·36	7	·315	4	·2
8	·32	6	·270	3	·15
7	·28	5	·225	2	·1
6	·24	4	·180	1	·05
5	·2	3	·135		
4	·16	2	·09		
3	·12	1	·045		
2	·08				
1	·04				

The decimals of a year are not added, as they can be readily obtained from the above table by prefixing a cipher for the first place of decimals, two for the second, &c., or placing the value accordingly. Example: Required value of ·9 and of ·07 of a year at 4 per cent. The value of nine years, with the cipher, being ·036, will give the value of ·9; and for ·07, the value of seven years, with two ciphers, or ·0028, will be the value. If ·97 were required, the two values must be added, and will be ·0388.

No. 15.

SQUARES WITH SIDE 11 TO 170.

Side	Square	Side	Square	Side	Square	Side	Square	Side	Square
11	121	43	1,849	75	5,625	107	11,449	139	19,321
12	144	44	1,936	76	5,776	108	11,664	140	19,600
13	169	45	2,025	77	5,929	109	11,881	141	19,881
14	196	46	2,116	78	6,084	110	12,100	142	20,164
15	225	47	2,209	79	6,241	111	12,321	143	20,449
16	256	48	2,304	80	6,400	112	12,544	144	20,736
17	289	49	2,401	81	6,561	113	12,769	145	21,025
18	324	50	2,500	82	6,724	114	12,996	146	21,316
19	361	51	2,601	83	6,889	115	13,225	147	21,609
20	400	52	2,704	84	7,056	116	13,456	148	21,904
21	441	53	2,809	85	7,225	117	13,689	149	22,201
22	484	54	2,916	86	7,396	118	13,924	150	22,500
23	529	55	3,025	87	7,569	119	14,161	151	22,801
24	576	56	3,136	88	7,744	120	14,400	152	23,104
25	625	57	3,249	89	7,921	121	14,641	153	23,409
26	676	58	3,364	90	8,100	122	14,884	154	23,716
27	729	59	3,481	91	8,281	123	15,129	155	24,025
28	784	60	3,600	92	8,464	124	15,376	156	24,336
29	841	61	3,721	93	8,649	125	15,625	157	24,649
30	900	62	3,844	94	8,836	126	15,876	158	24,964
31	961	63	3,969	95	9,025	127	16,129	159	25,281
32	1,024	64	4,096	96	9,216	128	16,384	160	25,600
33	1,089	65	4,225	97	9,409	129	16,641	161	25,921
34	1,156	66	4,356	98	9,604	130	16,900	162	26,244
35	1,225	67	4,489	99	9,801	131	17,161	163	26,569
36	1,296	68	4,624	100	10,000	132	17,424	164	26,896
37	1,369	69	4,761	101	10,201	133	17,689	165	27,225
38	1,444	70	4,900	102	10,404	134	17,956	166	27,556
39	1,521	71	5,041	103	10,609	135	18,225	167	27,889
40	1,600	72	5,184	104	10,816	136	18,496	168	28,224
41	1,681	73	5,329	105	11,025	137	18,769	169	28,561
42	1,764	74	5,476	106	11,236	138	19,044	170	28,900

No. 16.

CIRCULAR AREAS.

(a) BY DIAMETER.				(b) BY CIRCUMFERENCE.			
Diam.	Area.	Diam.	Area.	Cir.	Area.	Cir.	Area.
1	0.7854	21	346.8606	30	71.6220	50	198.95
2	3.1416	22	380.1327	31	76.47638	51	206.98758
3	7.06858	23	415.4756	32	81.48992	52	215.18432
4	12.56637	24	452.3893	33	86.76262	53	223.54022
5	19.63495	25	500.7404	34	91.99448	54	232.05528
6	28.27433	26	530.9291	35	97.4855	55	240.72950
7	38.48456	27	572.55526	36	103.13568	56	249.56288
8	50.26548	28	615.75216	37	108.94502	57	258.55542
9	63.61725	29	660.51985	38	114.91352	58	267.70712
10	78.5398	30	706.85834	39	121.04118	59	277.01798
11	95.03317	31	754.76763	40	127.328	60	286.488
12	113.097335	32	804.24771	41	133.77398	61	296.11718
13	132.73229	33	855.2986	42	140.37912	62	305.90552
14	153.988	34	907.92027	43	147.14342	63	315.85302
15	176.71458	35	962.11275	44	154.06688	64	325.95968
16	201.06193	36	1017.87601	45	161.1495	65	336.2255
17	226.98	37	1075.21	46	168.37128	66	346.65018
18	264.469	38	1134.11494	47	175.79222	67	357.23462
19	283.5287	39	1194.5906	48	183.35232	68	367.97792
20	314.15926	40	1256.637	49	191.07158	69	378.88038

No. 17.

SQUARES AND CIRCULAR AREAS, WITH SIDE AND DIAMETER EQUAL.

Contents of Square.	Circle.	FIGS. AND DECLS.				
		M	C	X	U	
9	7.0686	4	3	2	1	<p>Ex.—A square contains 1624 inches.</p> <p>1000 (1 M) = 785.4 600 (6 C) = 471.24 20 (2 X) = 15.708 4 (U) = 3.1416</p> <p>Circle contains..... 1275.4396</p>
8	6.2832	..	..	..	..
7	5.4978	..	..	..	..
6	4.7124	..	..	..	..
5	3.9270	..	..	..	..
4	3.1416	..	..	..	..
3	2.3562	..	..	..	..
2	1.5708	..	..	..	..
1	.7854	..	2	1	.1	

No. 18.
FOR MEASURING TIMBER.

Quarter Girt.	Area.	Quarter Girt.	Area.	Quarter Girt.	Area.	Quarter Girt.	Area.	Quarter Girt.	Area.	Quarter Girt.	Area.
In.	Ft.	In.	Ft.	In.	Ft.	In.	Ft.	In.	Ft.	In.	Ft.
6	250	9	562	12	1000	15	1562	18	2250	24	4000
6½	272	9½	594	12½	1042	15½	1615	18½	2376	24½	4168
6¾	294	9¾	626	12¾	1085	15¾	1668	19	2506	25	4340
6¾	317	9¾	659	12¾	1129	15¾	1722	19½	2640	25½	4516
7	340	10	694	13	1174	16	1777	20	2777	26	4694
7½	364	10½	730	13½	1219	16½	1833	20½	2917	26½	4876
7¾	390	10¾	766	13¾	1265	16¾	1890	21	3062	27	5062
7¾	417	10¾	803	13¾	1313	16¾	1948	21½	3209	27½	5252
8	444	11	840	14	1361	17	2006	22	3362	28	5444
8½	472	11½	878	14½	1410	17½	2066	22½	3516	28½	5640
8¾	501	11¾	918	14¾	1460	17¾	2126	23	3673	29	5840
8¾	531	11¾	959	14¾	1511	17¾	2187	23½	3835	29½	6044

No. 19.
CUBIC MEASURES.

(a) Contents of Inches in Gallons.								(b) Dec. of a Gallon.	1 gallon = 277·274 inches. 1 ditto = 10lbs. avoirdupois. 8 ditto = 1 bushel.	(c) Contents of Inches in Feet.							
No.	C	M	X	M	C	X	U			Inches.	No.	C	M	X	M	C	X	U
9	3245	9	3	2	1	1	2	9	249·5466	9	520	833	2	1	1	2	3
8	2885	2	..	..	..	..	..	8	221·8192	8	462	962	..	..	..	..	..
7	2524	6	..	..	..	..	..	7	194·0918	7	405	092	..	..	..	..	..
6	2163	9	..	..	..	..	..	6	166·3644	6	347	222	..	..	..	..	..
5	1803	3	..	..	..	..	..	5	138·6379	5	289	352	..	..	..	..	..
4	1442	6	..	..	..	..	..	4	110·9096	4	231	481	..	..	..	..	..
3	1082	..	..	..	..	..	..	3	83·1822	3	173	611	..	..	..	..	..
2	721	3	2	1	1	2	3	2	55·4548	2	115	741	..	..	..	..	..
1	360	7	..	..	..	..	..	1	27·7274	1	57	870	1	1	2	3	4

(d) Decimals of a Foot.		(e)			(f) Contents of Feet in yards.				(g) Decimals of a Yard.	
D.	Inches.	No.	(1) Feet = Imp. Bushels.	(2) Imp. Bushels = Feet.	No.	M	C	X	D	Feet.
9	1555.2	9	7.011	11.5524	9	333.333	2	1	9	24.3
8	1382.4	8	6.232	10.2688	8	296.296	..	..	8	21.6
7	1209.6	7	5.453	8.9852	7	259.259	..	..	7	18.9
6	1036.8	6	4.674	7.7016	6	222.222	..	..	6	16.2
5	864.0	5	3.895	6.4180	5	185.185	..	..	5	13.5
4	691.2	4	3.116	5.1344	4	148.148	..	..	4	10.8
3	518.4	3	2.337	3.8508	3	111.111	..	..	3	8.1
2	345.6	2	1.558	2.5672	2	74.074	1	1	2	5.4
1	172.8	1	.779	1.2836	1	37.037	..	..	1	2.7

No. 20.

DIAGONAL LINE FOR CASK GAUGING.

Diagonal Line in Inches and decimal parts of an Inch.	Gallons.	Diagonal Line in inches and decimal parts of an Inch.	Gallons.	Diagonal Line in inches and decimal parts of an Inch.	Gallons.	Diagonal Line in inches and decimal parts of an Inch.	Gallons.
6.04	$\frac{1}{2}$	28.21	51	35.42	101	40.5	151
7.61	1	28.39	52	35.54	102	40.59	152
9.58	2	28.57	53	35.65	103	40.68	153
10.97	3	28.75	54	35.77	104	40.77	154
12.07	4	28.92	55	35.88	105	40.86	155
13.01	5	29.1	56	36.	106	40.94	156
13.82	6	29.27	57	36.11	107	41.03	157
14.55	7	29.44	58	36.22	108	41.12	158
15.21	8	29.61	59	36.33	109	41.2	159
15.82	9	29.78	60	36.44	110	41.29	160
16.39	10	29.94	61	36.55	111	41.38	161
16.92	11	30.1	62	36.66	112	41.46	162
17.41	12	30.26	63	36.77	113	41.55	163
17.88	13	30.42	64	36.88	114	41.63	164
18.33	14	30.58	65	36.99	115	41.72	165
18.76	15	30.74	66	37.09	116	41.8	166
19.17	16	30.89	67	37.2	117	41.88	167
19.56	17	31.04	68	37.3	118	41.97	168
19.93	18	31.2	69	37.41	119	42.05	169
20.3	19	31.35	70	37.52	120	42.14	170
20.65	20	31.49	71	37.62	121	42.21	171
20.98	21	31.64	72	37.72	122	42.3	172
21.31	22	31.79	73	37.82	123	42.38	173
21.63	23	31.93	74	37.93	124	42.46	174
21.95	24	32.08	75	38.03	125	42.54	175
22.24	25	32.22	76	38.13	126	42.62	176
22.53	26	32.36	77	38.23	127	42.7	177
22.82	27	32.5	78	38.33	128	42.78	178
23.1	28	32.64	79	38.43	129	42.87	179
23.37	29	32.77	80	38.53	130	42.95	180
23.63	30	32.91	81	38.63	131	43.02	181
23.89	31	33.04	82	38.73	132	43.1	182
24.15	32	33.18	83	38.83	133	43.18	183
24.4	33	33.31	84	38.92	134	43.26	184
24.64	34	33.44	85	39.02	135	43.34	185
24.88	35	33.57	86	39.11	136	43.42	186
25.11	36	33.7	87	39.21	137	43.49	187
25.34	37	33.83	88	39.3	138	43.57	188
25.57	38	33.96	89	39.4	139	43.65	189
25.79	39	34.08	90	39.49	140	43.73	190
26.01	40	34.21	91	39.59	141	43.8	191
26.23	41	34.34	92	39.68	142	43.88	192
26.44	42	34.46	93	39.77	143	43.95	193
26.65	43	34.58	94	39.87	144	44.03	194
26.85	44	34.7	95	39.96	145	44.1	195
27.05	45	34.83	96	40.05	146	44.18	196
27.25	46	34.95	97	40.14	147	44.26	197
27.45	47	35.06	98	40.23	148	44.33	198
27.64	48	35.19	99	40.32	149	44.4	199
27.83	49	35.3	100	40.41	150	44.48	200
28.02	50						

No. 21.

SPECIFIC GRAVITIES.

SOLIDS.

Apple tree, dry ..	·798	Glass, flint	3·277	Poplar, dry	·388
Ash, dry	·800	Gold, pure	19·2587	Pumice stone	·915
Beech, dry	·852	—, hammered	19·362	Sand	1·520
Boxwood	1·030	—, sovereign	18·769	Salt	2·130
—, Dutch	·912	—, trinket	17·647	Silver, virgin	10·474
Brick	2·000	Granite, Aber-		—, hammered	10·511
Brass, cast	8·395	deen, bluish		—, shilling	10·534
Butter	·9423		2·625 to 2·654	Slate, clay	2·670
Chalk, British	2·784	—, Cornish	2·662	Soap, hard, hot ..	·990
—, Spanish	2·790	—, Bretagne gray .	2·738	—, hard, cold	1·0216
Clay	2·160	Gypsum ..	2·167 to 2·311	—, soft, cold	1·08801
Coal	1·250 to 1·308	Honey	1·456	—, silicated,	
Copper	7·700	Iron, cast	7·207	hot	1·1884
—, cast ..	7·788 to 8·788	—, bar	7·788	cold	1·2263
Cork	·240	—, stone	4·323	Steel	7·840
Earth, light	1·984	Lard	·948	—, hard	7·816
Ebony	1·290	Lead, cast	11·352	Stone paving	2·416
Elm	·600 to ·671	Limestone, green .	3·182	—, Portland	2·570
Fat, beef ..	·9232 to ·9480	Litharge	6·300	Sugar, loaf	1·600
—, mutton ..	·9235	Logwood	·913	Talc.	2·700 to 2·800
Feldspar	2·500	Mahogany	1·060	Tallow	·942
Fir	·490 to ·600	Mercury, 30 deg. .	13·619	Tin, pure Cornish	7·291
—, yellow	·657	—, 60 deg.	13·580	—, cast	7·291
Glass, crown	2·527	—, solid, 40 deg.		Wax	·897
—, German sheet .	2·533	below Zero	15·632	Willow	·585
—, broad	2·721	Oak	1·1700	Zinc, pure	7·1908
—, plate	2·432	—, dry	·925	—, in its usual	
—, comn. bottle ..	2·724	Porcelain, china ..	2·380	state	6·862

FLUIDS, &c.

Acid, nitric	1·270	Hydrogen gas	·00008	Wine, Burgundy ..	·992
—, muriatic	1·940	Milk, cow's	1·032	—, Bordeaux	·994
—, sulphuric	1·840	Oil, olive	9·153	—, Champagne,	
Alcohol, 60°	·825	—, linseed	·940	white	·998
—, proof, 51°	·923	—, whale	·9233	—, Claret	·994
—, commercial ..	·837	Oxygen gas	·00132	—, Canary	1·033
Atmospheric air .	·00903	Spirits (<i>see</i> Alcohol).		—, Constance	1·062
Beer, pale	1·023	Turpentine, spirits	·870	—, Madeira	1·038
—, brown	1·034	Vinegar	1·010	—, Malaga	1·022
Carbonic acid gas	·00174	—, distilled	1·025	—, Port, red and	
Cyder	1·018	Water, distilled ..	1·000	white	·997
Ether, sulphuric .	·730	—, sea	1·026	—, Sherry	·992
—, nitric	·908	—, spring	1·0017	—, Tokay	1·054

As a cubic foot of water is 1000 oz., and 1·000 is taken to be the specific gravity of water, so a table of specific gravities expresses the ounces in a cubic foot of each of the bodies. At 70 degrees, the specific gravity of water is ·99913; at 38 degrees, 1·00113; at 54 degrees, 1·00064; and at 62 degrees, 1·000. The difference between 62 and 59 degrees, in a gallon of 277·274 inches, is one-third of a cubic inch.

No. 22.

MISCELLANEOUS WEIGHTS AND MEASURES.

<i>Apothecaries' Weight.</i>		<i>Oil (sweet).</i>	
20 grains make 1 scruple.		236 pounds make 1 tun.	
3 scruples 1 dram.		<i>Paper.</i>	
8 drams 1 ounce.		20 sheets 1 quire, outsides.	
<i>Bread.</i>		24 sheets 1 quire, insides.	
2 pounds $\frac{1}{4}$ -quartern loaf.		20 quires 1 ream.	
4 pounds 1 quartern loaf.		21 $\frac{1}{4}$ quires 1 printer's ream.	
<i>Bricks.</i>		2 reams 1 bundle.	
500 1 load.		10 reams 1 bale.	
<i>Candles.</i>		<i>Parchment.</i>	
120 pounds 1 barrel.		60 skins 1 roll.	
<i>Cheese and Butter.</i>		<i>Potatoes.</i>	
8 pounds 1 nail.		200 pounds 1 barrel.	
32 cloves 1 wey (Essex).		<i>Raisins.</i>	
42 cloves 1 wey (Suffolk).		112 pounds 1 bushel.	
56 pounds 1 firkin.		<i>Rice.</i>	
224 pounds 1 barrel.		168 pounds 1 barrel.	
<i>Cloth.</i>		<i>Salt.</i>	
2 $\frac{1}{2}$ inches 1 nail.		14 pounds 1 peck.	
4 nails 1 quarter.		56 pounds 1 bushel.	
3 quarters .. 1 Flemish ell.		42 bushels 1 ton.	
4 quarters .. 1 yard.		<i>Soap.</i>	
5 quarters .. 1 English ell.		64 pounds or	
6 quarters .. 1 French ell.		8 gallons .. 1 firkin.	
<i>Coals.</i>		256 pounds 1 barrel.	
88 pounds 1 bushel.		<i>Straw.</i>	
8168 pounds 1 chaldron.		36 pounds 1 truss.	
224 pounds 1 sack.		<i>Tea.</i>	
10 sacks 1 ton.		48 lbs. (about) 1 chest.	
<i>Corn.</i>		<i>Tiles.</i>	
5 bushels 1 load.		1000 1 load.	
40 bushels 1 cart.		<i>Tobacco.</i>	
60 pounds 1 bushel of wheat.		2 to 3 cwt. .. 1 barrel.	
52 pounds 1 bushel of rye.		<i>Water.</i>	
47 pounds 1 bushel of barley.		1000 ounces 1 cubic foot.	
88 pounds 1 bushel of oats.		<i>Wine.</i>	
<i>Flour.</i>		138 gallons 1 pipe of Port.	
14 pounds 1 peck.		140 gallons 1 do. of Lisbon.	
56 pounds 1 bushel.		110 gallons 1 do. of Madeira.	
280 pounds 1 sack.		120 gallons 1 do. Teneriffe.	
5 bushels 1 sack.		57 gallons 1 hhd. of Claret.	
<i>Glass.</i>		36 gallons 1 awm of Hock.	
120 pounds 1 seam.		63 gallons 1 hhd. of Sherry.	
<i>Hay (new).</i>		180 gallons 1 butt of Sherry.	
60 pounds 1 truss.		<i>Wood.</i>	
<i>Hay (old).</i>		1000 billets 1 cord.	
56 pounds 1 truss.		10 cwt. 1 cord.	
36 trusses 1 load.		108 feet 1 stack.	
<i>Hops.</i>		128 feet 1 cord.	
112 pounds 1 packet (Surrey and		<i>Wool.</i>	
Sussex).		7 pounds 1 clove.	
250 pounds 1 bag (Kent).		2 cloves 1 stone.	
<i>Meat.</i>		2 stones 1 tod.	
8 pounds 1 stone.		6 $\frac{1}{4}$ tods 1 wey.	
<i>Oatmeal.</i>		2 weys 1 sack.	
200 pounds 1 barrel.		12 sacks, or	
<i>Oil (train).</i>		4368 pounds 1 last.	
9 pounds 6 ounces, 1 gallon.		240 pounds 1 pack.	

No. 23.

SHOWING THE INCOME OF PURCHASE OF LEASEHOLDS AND ANNUITIES FOR YEARS CERTAIN.

Years to continue.	Yearly Income for each £100 paid.	Interest per Cent. for the Time and Capital replaced at 4 per Cent.	Perpetuity of equal value (4 per Cent.).	Years to continue.	Yearly Income for each £100 paid.	Interest per Cent. for the Time, and Capital replaced at 4 per Cent.	Perpetuity of equal value (4 per Cent.).
	£	£ s. d.	£ s. d.		£	£ s. d.	£ s. d.
10	13	4 13 5	4 4 4	40	6	4 19 0	4 15 0
	14	5 13 5	4 10 10		7	5 19 0	5 10 10
	15	6 13 5	4 17 4		8	6 19 0	6 6 8
	16	7 13 5	5 3 10		9	7 19 0	7 2 6
	17	8 13 5	5 10 4		10	8 19 0	7 18 4
15	10	5 0 0	4 8 11	45	5	4 3 6	4 2 11
	11	6 0 0	4 17 9		6	5 3 6	4 19 6
	12	7 0 0	5 6 8		7	6 3 6	5 16 1
	13	8 0 0	5 15 7		8	7 3 6	6 12 8
	14	9 0 0	6 4 6		9	8 3 6	7 9 3
20	9	5 12 10	4 17 10	50	5	4 7 2	4 6 2
	10	6 12 10	5 8 9		6	5 7 2	5 3 4
	11	7 12 10	5 19 7		7	6 7 2	6 0 6
	12	8 12 10	6 10 6		8	7 7 2	6 17 9
	13	9 12 10	7 1 4		9	8 7 2	7 14 11
25	8	5 13 0	5 0 0	55	5	4 9 6	4 8 5
	9	6 13 0	5 12 6		6	5 9 6	5 6 0
	10	7 13 0	6 5 0		7	6 9 6	6 3 8
	11	8 13 0	6 17 6		8	7 9 6	7 1 4
	12	9 13 0	7 10 0		9	8 9 6	7 19 0
30	7	5 4 4	4 16 11	60	5	4 11 7	4 10 5
	8	6 4 4	5 10 9		6	5 11 7	5 8 6
	9	7 4 4	6 4 7		7	6 11 7	6 6 8
	10	8 4 4	6 18 5		8	7 11 7	7 4 9
	11	9 4 4	7 12 3		9	8 11 7	8 2 10
35	6	4 12 8	4 10 0				
	7	5 12 8	5 4 11				
	8	6 12 8	5 19 10				
	9	7 12 8	6 14 10				
	10	8 12 8	7 9 9				

No. 24.

LEASEHOLDS AND ANNUITIES FOR YEARS CERTAIN, EQUAL IN
VALUE TO A PERPETUITY OF £4.

Years.	Net Income.	Years.	Net Income.
	£ s. d.		£ s. d.
10	12 6 7	40	5 1 0½
15	9 0 0	45	4 16 6½
20	7 7 2	50	4 12 10½
25	6 8 0½	55	4 10 5½
30	5 15 8	60	4 8 5
35	5 7 2		

No. 25.

PRICES AT WHICH STOCK PAYING DIVIDENDS FROM 3 TO 6 PER
CENT. PER ANNUM WILL PAY INTEREST FROM 3½ TO 6 PER CENT.

Int. made.	3	3½	3½	4	4½	5	6
3½	92·308	100·0	107·692	123·076	138·459	153·846	184·616
3½	85·715	92·857	100·0	114·286	128·572	142·857	171·428
3½	80·0	86·667	93·333	106·667	120·0	133·333	160·0
4	75·0	81·250	87·500	100·0	112·500	125·0	150·0
4½	70·589	76·471	82·353	94·118	105·882	117·647	141·176
4½	66·667	72·222	77·778	88·889	100·0	111·111	133·333
4½	63·158	68·421	73·684	84·210	94·734	105·263	126·316
5	60·0	65·0	70·0	80·0	90·0	100·0	120·0
5½	54·547	59·091	63·636	72·727	81·818	90·009	109·091
6	50·0	54·167	58·333	66·667	75·0	83·333	100·0

ADDENDUM TO PART II.

CONDITIONS OF A LETTING BY AUCTION AT A GROUND RENT; THE LESSEE TO BUILD UPON THE PREMISES.

1. The biddings shall be of a net annual rent for a lease for a term of years from the day of , 18 , at the rent of a peppercorn until next, and afterwards at a yearly rent equal in amount to the amount at which such highest bidder shall be declared entitled to the lease.

2. No bidder shall advance a less sum of yearly rent at any bidding than shall be named by the auctioneer at the time of putting up the property; and no bidding shall be retracted. If any dispute arise respecting a bidding, the property shall be put up again and re-let. The lessor reserves the right to bid by himself or his agents.

3. The person declared entitled to a lease of the property (hereinafter called the lessee), shall immediately thereupon sign the subjoined agreement, and shall pay to the auctioneer, as a deposit, a sum equal in amount to the amount of one year of the yearly rent at which he shall have been declared entitled to the lease, and such payment shall, subject to these conditions, be taken to discharge the lessee from the payment of the rent under the lease to the day of , 18 .

4. An abstract of the lessor's title may be perused prior to the time of letting at the office of the lessor's solicitor, and the lessee shall, at any time after the letting, at his own expense, be entitled to have a copy of such abstract delivered to him; and the expenses both of the lessor and lessee, of and attending the investigation of the title, and of all attested or other copies of deeds, wills and other documents, and of all deeds of covenant for production of deeds and of all certificates and evidences of title shall be borne and paid by the lessee.

5. The plan shall be taken as part of the particulars. The property is believed to be correctly described as to quantity and otherwise, and is let subject to all existing rights of way, drainage and watercourse, and other easements (if any) subsisting thereon, and as the property is open to view, no error of description or misstatement in the particular or plan shall annul the letting or entitle the lessee to compensation.

6. The lessee shall within six weeks submit to the lessor, or to an architect or surveyor to be nominated by the lessor, for approval, the plans, elevations, sections, specification and particulars of the building which the lessee proposes to erect on the property, and the lessee shall submit to any modifications or alterations in or additions to the said plans, elevations, sections, specification and particulars,

or any of them, which the lessor or such architect or surveyor shall in his discretion deem fit; and a copy of such plans, elevations, sections, specification and particulars, when approved, shall be signed by the lessee, and shall be deposited with the lessor, and be binding upon the lessor and the lessee.

7. The lessee shall erect on the property, and completely finish, fit for occupation and use, one or more building or buildings, which shall be built in a substantial and workmanlike manner, with good, new and proper materials, and shall be erected and completely finished with all necessary fixtures, drains and conveniences, in accordance with the plans, elevations, sections, specification and particulars deposited as aforesaid, and to the satisfaction in all respects of the lessor, or his architect or surveyor, and in particular the footings of all walls shall be carried down to such depth as the said architect or surveyor shall require, and a concrete bottom of such quality, depth and breadth as shall be required by him shall be formed under the said footings, and the lessee shall in all respects conform to the provisions of the Building Acts. The lessee shall indemnify the lessor against all proceedings and expenses with reference to party walls and party structures, and shall adopt any agreement made by the lessor for the building or re-instating party walls.

8. The lessee may, at the expiration of seven days after the letting shall have been confirmed as hereinafter mentioned, enter upon the property, and shall cover in his buildings by the day of , 18 , and shall completely finish the same fit for occupation and use by the day of , 18 .

9. The lessor and his architect or surveyor for the time being may at all times enter upon the property to view and survey the works hereby agreed to be executed and the materials to be therein used.

10. If the building or buildings shall be erected and covered in by the lessee in the manner and to the extent hereinbefore stipulated, and according to the aforesaid plans, elevations, sections, specification and particulars by the day of , 18 , the lessor will demise the property with the buildings thereon to the lessee for the term of years from the day of , 18 , at the rent of a peppercorn until the day of , 18 , and afterwards at a yearly rent equal in amount to the amount at which the lessee shall be entitled to the lease, such yearly rent to be payable by equal quarterly payments on the usual quarter days, without any deduction whatever.

11. The lease shall contain all such covenants and conditions, stipulations and agreements as are contained in the draft form of a building lease which will be produced at the time of letting and may be inspected in the meantime at the office of the lessor's solicitor.

12. The lessee shall accept such lease and execute and deliver to the lessor a counterpart thereof. The lease and counterpart shall be prepared by the lessor's solicitor, and the expenses of the preparation, engrossment and execution thereof shall be borne by the lessee.

13. If the lease shall be granted prior to the completion of the building and full performance of the works herein specified, the agreement shall remain in full force and be binding upon the lessee until the same works shall be fully performed.

14. In case the lessee shall not cover in the said buildings, or shall not completely finish the same fit for occupation and use, with all necessary fixtures, drains and conveniences thereto, within the respective times hereinbefore mentioned (and in this respect time shall be of the essence of the contract), or if the lessee shall neglect or refuse to accept the lease and execute a counterpart thereof and pay the reasonable charges for preparing, engrossing and executing the same within one calendar month next after he shall be requested so to do, or if the lessee shall make default in the observance or performance of any stipulation or agreement hereinbefore contained on his part to be observed or performed, the lessor may immediately thereupon re-enter upon and take possession of the property and any buildings and materials thereon for his own use and benefit and re-let the same, as if the contract with the lessee had never been made, but without prejudice to the right of the lessor to recover any arrears of rent or any other sums payable by the lessee under these conditions, and without prejudice to all other rights and remedies which the lessor might otherwise have for breach of these conditions or any of them.

15. If the lessor shall on inquiry or of his own knowledge be satisfied that the lessee is ineligible as a tenant, the lessor may within seven days after the letting, by notice in writing, to be given to the lessee or his solicitor, or left at the last known place of residence or business of the lessee, vacate the contract, and the lessee shall thereupon be entitled to receive his deposit, but without interest, costs or compensation; and in the event of no such notice being given, the lessor shall, after seven days from the letting, be entitled to receive the deposit aforesaid from the auctioneers;

The Agreement referred to in the Conditions of Letting.

We, (hereinafter called the lessor), and (hereinafter called the lessee), hereby respectively declare as follows:—That the lessee was the highest bidder for, and declared entitled to a lease of, the property described in the above particulars, at the net yearly rent of £ , after the first year of the term, and that the lessee has paid the sum of £ , the amount of one year of the said yearly rent, to the auctioneers, to be held by them as a deposit. And the lessor and lessee hereby respectively agree to abide by and perform the above conditions of letting, so far as the same are to be performed by them respectively in respect of the property.

Dated the day of , 18 .

[Signatures.]

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